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THE DEATH DUTIES.

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THE
DEATH DUTIES

COMPRISING

ESTATE, LEGACY AND SUCCESSION DUTIES.

THE LAW AND PRACTICE

AND THE

TEXT OF THE STATUTES

BY

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PREFACE TO THE FIFTH EDITION.

ALTHOUGH the Fourth Edition was issued last year, a further Edition is necessary. In view of the fact that the new laws relating to property, including the Law of Property (Amendment) Act, 1926 (which does not, however, directly affect the Death Duties), came into operation this year, a considerable amount of revision has been effected, particularly in the Chapters relating to accountability for Estate Duty and Succession Duty. In addition, a number of important decisions have been noted and a good deal of new matter of practical interest has been added. The text of the Finance Act, 1925 and of the new Acts relating to property, so far as they affect Death Duties, has been added to the Appendix.

I have been fortunate in this Edition in having the assistance of Mr. G. M. Green, whose more recent acquaintance with the difficulties which beset practitioners in dealing with this subject should add to the value of the work.

I have also to acknowledge with gratitude the help given by my friend, Mr. W. E. Willan, and by other colleagues who have yielded so graciously to my importunities.

R. DYMOND.

October, 1926.

PREFACE TO THE FIRST EDITION.

IT is perhaps necessary to give some explanation to justify this addition to the number of books on the Death Duties. In the first place, the importance of the Death Duties as a tax on capital and as a source of revenue has been largely increased by recent legislation. Their long history and the technicalities of the incidence of Legacy Duty and Succession Duty on the one hand and Estate Duty on the other have evolved a system of considerable complexity, and it is a matter of difficulty to obtain a clear idea of the subject.

Most of the more recent works deal with Estate Duty only, and it was thought that there was an opening for a book of moderate size giving a concise but practical account of all the Death Duties as they exist at the present time. Such a work could not have been carried out on the ordinary plan of setting out the decided Cases and Sections of the Acts and making notes thereon. I have therefore attempted to give the essence of the matter and to put it into a compact form so that it may be of practical use, not only to the lawyer, but also to the layman and the student. The winding path by which the present system has been attained has not been minutely followed, and the text has thus been freed from references to superseded duties, repealed law, and obsolete decisions.

At the same time the necessity for authority in support of the statements made has been kept strictly in view, and detailed references to the various Acts and Judicial Decisions are given at the foot of each page. The Index also is somewhat more elaborate than is usual for a book of this size.

All the Duties payable on Death being dealt with in one volume, their inter-dependence and the differences in incidence are made clear.

The book has been written from a practical point of view. In almost all cases illustrations are given, and I have endeavoured to convey the result of many years' experience of Death Duty Law and Practice both inside and outside the Estate Duty Office, but it must not be understood that any of the statements possess official authority.

In conclusion I wish to render grateful thanks to Mr. J. Webster Brown, of the Estate Duty Office, Solicitor, and author of a book on the Estate Duty, for valuable assistance and advice, and to Mr. F. P. Clark, of the same Office, for kindly reading the proofs.

R. DYMOND.

Estate Duty Office,
Somerset House,
June, 1913.

INTRODUCTION.

THE death duties payable in respect of the estates of persons dying at the present time are—

1. ESTATE DUTY.
2. LEGACY DUTY.
3. SUCCESSION DUTY.

Estate Duty is payable, at rates graduated according to the value of the estate, on all property passing on death without regard to the persons who benefit or their relationship to the deceased.

Legacy Duty and Succession Duty are taxes on the actual benefit coming to the legatee or successor. The rates vary with the relationship of the legatee or successor to the testator or predecessor ; and (except as to the £1 per cent. rates), do not depend like Estate Duty on the amount or value of the property passing. Legacy Duty is only payable on personal property (not including leaseholds) under wills or intestacies and on donations *mortis causa ;* while Succession Duty is payable on all gratuitous acquisitions on death except where Legacy Duty is chargeable.

The duties treated of in this work are those payable on a death occurring at the present time, *i.e.*, after the passing of the Finance Act, 1925 ; and where the term " deceased " is used it may be assumed, unless otherwise stated, to refer to a person who has died after that date.

Only one reference to decided cases is given in the text, but complete references will be found in the Table of Cases.

The text of the Statutes relating to the existing duties is given in the Appendix at the end of the book ; but for an exhaustive collection, both of the Statutes and of the Statutory Rules and Orders, reference may be made to " The British Death Duty Acts, 1796-1924, and Supplement No. 1," issued by the Estate Duty Office.

The following abbreviations are employed in the text :—

A. E. A. 1925	-	Administration of Estates Act, 1925.
F. A.	- -	Finance Act.
F. A. 1910	-	Finance (1909-10) Act, 1910.
L. C. A. 1925	-	Land Charges Act, 1925.
L. R. A. 1925	-	Land Registration Act, 1925.
L. P. A. 1925	-	Law of Property Act, 1925.
L. D. A. 1796	-	Legacy Duty Act, 1796.
S. D. A. 1853	-	Succession Duty Act, 1853.

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8 & 9 Vict. c. 16 (Companies Clauses (Consolidation) Act, 1845):
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8 & 9 Vict. c. 76 (Revenue Act, 1845), **407**:
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25 & 26 Vict. c. 22 (Revenue Act, 1862), **420** :

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28 & 29 Vict. c. 104 (Crown Suits Act, 1865), **420** :

30 & 31 Vict. c. 144 : s. 3, p. 33.

31 & 32 Vict. c. 124 (Inland Revenue Act, 1868), **420** :

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44 & 45 Vict. c. 12 (Customs & Inland Revenue Act, 1881), **421** :

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47 & 48 Vict. c. 62 (Revenue Act, 1884), **422** :

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51 & 52 Vict. c. 8 (Customs & Inland Revenue Act, 1888), **423** :

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52 & 53 Vict. c. 7 (Customs & Inland Revenue Act, 1889), **424** :

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57 & 58 Vict. c. 30 (Finance Act, 1894), **427** :

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59 & 60 Vict. c. 28 (Finance Act, 1896), **443** :

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61 & 62 Vict. c. 10 (Finance Act, 1898), **446** :

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63 & 64 Vict. c. 7 (Finance Act, 1900), **447** :

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3 Edw. VII. c. 46 (Revenue Act, 1903), **449** :

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7 Edw. VII. c. 13 (Finance Act, 1907), **449** :

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8 Edw. VII. c. 69 (Companies (Consolidation) Act, 1908), **451** :

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8 & 9 Geo. V. c. 15 (Finance Act, 1918), **467**:
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13 Geo. V, sess 2, c. 1 (Irish Free State Constitution Act, 1922) : pp. 16, 112.

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15 & 16 Geo. V. c. 23 (Administration of Estates Act, 1925) :
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16 & 17 Geo. V. c. 11 (Law of Property (Amendment) Act, 1926) : Preface to 5th Edition.

16 & 17 Geo. V. c. 29 (Adoption of Children Act, 1926) : pp. 323, 356 :
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PART I.

ESTATE DUTY.

THIS duty was imposed in its present form by the F. A. 1894, and is payable in the case of all persons dying after 1st August, 1894. It practically superseded Probate Duty and Account Duty and is chargeable on all property passing on death, without regard to the relationship of the beneficiaries to the deceased owner.

The rates of duty depend on the amount or value of the property passing, and run from 1 per cent. for an estate exceeding £100 up to 40 per cent. for an estate of over £2,000,000 (F. A. 1925, s. 22).

The sweeping provision that the duty is payable on all property "passing" upon the death of the deceased (F. A. 1894, s. 1) brought within the area of taxation not only property which belonged to him absolutely, including his real estate (which formerly did not bear the analogous Probate Duty), but also property comprised in any instrument not made by him, or property in which he had only a limited interest (as, for instance, a life interest), and even property in which he had no interest at all. It is sufficient to attract the duty that the property should "pass," or, by virtue of the Acts, should be "deemed to pass" (F. A. 1894, s. 2) on his death.

For determining the *rate* of Estate Duty, a new principle was introduced by the F. A. 1894, called "Aggregation" (F. A. 1894, s. 4, as amended by F. A. 1900, ss. 12 and 18, and F. A. 1907, s. 16). Thus where several distinct estates pass on a person's death, as, for instance, his free estate under his will and settled property under his marriage

settlement, in order to determine the rate of duty in respect of any particular estate, it is necessary to aggregate it with or add it to, the other estates passing. The appropriate rate of duty for the aggregated total will then be the rate of duty payable in respect of the particular property under consideration. There are, however, exceptions to this principle which will be explained in due course.

The F. A. 1896 provided for the allowance in certain cases against Estate Duty of the Legacy Duty or Succession Duty paid on settled property.

The F. A. 1910 reintroduced the 1 per cent. Legacy and Succession Duties, increased the other rates of these duties and, as amended by later Acts of 1911 and 1912, deferred the payment of duty on timber until sale.

Formerly settled property which had borne Probate Duty was exempt from Estate Duty (F. A. 1894, s. 21 (1), as amended by F. A. 1910, s. 55) and so also was settled property which had once paid Estate Duty (F.A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13, and F. A. 1910, s. 55), but in the latter case a further Estate Duty called Settlement Estate Duty was charged by way of compensation (F. A. 1894, s. 5 (1), and F. A. 1910, s. 54). The F. A. 1914, however, abolished Settlement Estate Duty, and caused Estate Duty to be imposed on each passing of settled property (F. A. 1914, s. 14), subject to an important exception in favour of married persons (F. A. 1914, s. 14, proviso (*a*)).

The F. A. 1914 also provided for an allowance of discount where land or a business or any interest therein again becomes liable to Estate Duty within five years (F. A. 1914, s. 15) and reduced the full amount of duty where the margin above the next step in the scale is small (F. A. 1914, s. 13 (1)).

The F. A. 1919 raised the rate of interest on death duties to £4 per cent.

The F. A. 1924 re-established the "Killed in War" remissions of duty originally introduced by the F. A. 1900, and extended by the Death Duties (Killed in War) Act 1914 and subsequent Finance Acts.

The F. A. 1925 further increased the rates of E. D. established by the F. A. 1919 on estates exceeding £12,500, but not exceeding £1,000,000.

The effect of the changes in the law of property which came into force on the 1st January 1926, so far as death duties are concerned, is to make personal representatives accountable for the duties on land, and to release it when sold from the charge of duty, unless such charge is registered.

The text of the Acts relating to Estate Duty is given in the Appendix, commencing page 427.

Estate Duty will be considered under the following heads :—

1. The Property upon Which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable.
4. Exemptions and Allowances.

CHAPTER I.

THE PROPERTY UPON WHICH ESTATE DUTY IS PAYABLE.

THE duty is imposed on all property, real or personal, settled or not settled, which passes on the death of the deceased (F. A. 1894, s. 1). The phrase "property passing" includes not only property which actually passes but is made to cover certain other property which might not have come within the meaning of the term "passing," but which for Estate Duty purposes is to be "deemed to pass" (F. A. 1894, s. 2). It also includes, besides property passing immediately on the death, property passing after an interval, either certainly or contingently and either originally or by way of substitutive limitation, and the expression "on the death," includes "at a period ascertainable only by reference to the death" (F. A. 1894, s. 22 (1) (*l*)).

The expression "property" includes real property and personal property and the proceeds of sales thereof respectively and any money or investment for the time being representing the proceeds of sale (F. A. 1894, s. 22 (1) (*f*)).

The duty is payable on the principal value at the date of the death: that is, the market value at that time (F. A. 1894, s. 7 (5)).

Property passing or deemed to pass on death may be considered under the following headings:—

(A) The deceased's free estate.

(B) Property situate out of Great Britain (subject to the qualifications hereafter mentioned).

(C) Property of which the deceased was competent to dispose.

(D) *Donationes mortis causa*, or death-bed gifts.

(E) Gifts *inter vivos*.

(F) Property owned jointly or purchased or invested in joint names and passing by survivorship.

(G) Policies of assurance, and annuities or other interests purchased or provided by the deceased.

(H) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by his death.

(I) Property comprised in a settlement.

A.—Deceased's Free Estate.

Estate Duty is payable on the deceased's free estate: that is, just the ordinary forms of real and personal property (F. A. 1894, s. 22 (1) (*f*)), passing under his will (F.A. 1894, s. 22 (1) (*b*)) or intestacy, which a man owns and can do as he likes with.

As the expressions "real" estate or property and "personal" estate or property will frequently recur in this book, it will be convenient to state that, for Estate Duty purposes, by "real" estate or property is meant all lands and houses which are held on freehold tenure, including also tithe rent charges, freehold ground rents, and lands held for the life of another person, and also copyhold property now enfranchised by the Law of Property Act, 1922, s. 128, and property held on certain other exceptional tenures such as Borough English, and Gavelkind, now abolished by A. E. A. 1925, s. 45.

By "personal" estate or property is meant all other kinds of property not comprised in the term "real" estate or property. It includes leasehold property or houses and lands

held for a term of years, stocks, shares, money, securities for money, furniture, policies of assurance, ships, shares in a business, and goodwill. In connection with deaths after 1925, it includes also an undivided share in land, *i.e.*, the share of a tenant in common. Every such interest is now subject to a trust for sale under L. P. A. 1925, s. 34, and 1st Sched., Part IV, para. 1. s. 16 (4) of this Act, which provides that the Act shall not alter any death duty in respect of land, has no application as the definition of "land" in s. 205 (ix) expressly excludes an undivided share.

Besides real and personal property actually in his possession, the deceased's estate may include an interest in expectancy, *i.e.*, property to which he was entitled in reversion. For instance : *A* by will gives a sum of £1,000 to *B* for life and on his death to *C*. *C* is said to have a reversion in the £1,000 expectant on the death of *B*, and if he dies before *B*, the fund, subject to *B's* life interest, forms part of *C's* estate and is liable to Estate Duty accordingly. But the duty may be paid either at *C's* death or on the death of *B* when it falls into possession (F. A. 1894, s. 7 (6)). If the duty is paid at *C's* death its value as a reversion should be accounted for. If, however, it is decided to postpone payment until *B's* death, when the reversion falls in, its value must still be added to or aggregated with the rest of *C's* estate in order to determine the correct rate of duty on the latter, and when the fund falls into possession by the death of *B*, duty has to be paid on its value at that date, the rate being ascertained by aggregation of such value with the value (at *C's* death) of the rest of his estate (*re* Colonel Eyre, deceased, [1907] 1 K. B. 331). (As to treating the rest of the estate if it does not exceed £1,000 as an estate by itself without regard to the reversion, *see* page 91.) The term "interest in expectancy," includes an estate in remainder or reversion and every other future interest, whether vested

or contingent (F. A. 1894, s. 22 (1) (*j*)), but it does not include a reversion expectant on the determination of a lease for a term of years, nor a policy on the life of another person. So where a testator dies possessed of property subject to a lease for a term of years or, in other words, a freehold ground rent, payment of Estate Duty on the reversion may not be deferred until the lease falls in, but should be accounted for in respect of the market value of the property subject to the existing lease *i.e.*, the value of the ground rent plus the value of the reversion. Similarly, if the deceased owns a policy on the life of another person who survives him, his executors must account for the saleable value of the policy as part of the testator's estate.

Where the deceased did not make a will and leaves no next-of-kin, his real and personal property, falling in default to the Crown, the Duchy of Lancaster or the Duke of Cornwall (under s. 46 of A. E. A. 1925) are still liable to Estate Duty.

An advowson, *i.e.*, the perpetual right to present an incumbent to a living of the Church of England on any vacancy occurring, or a right to the next presentation, was formerly considered liable to Estate Duty when sold (*see* F. A. 1894, s. 15 (4)). It has, however, been decided that the F. A. 1894 failed to provide machinery for charging Estate Duty, and therefore that Duty is not payable on the sale of advowsons (A.-G. *v.* Peek, [1913], 2 K. B. 487). Succession Duty will, however, be payable, and that at the higher rates which are chargeable where there has been no payment of Estate Duty (*see* page 323).

Under s. 33 of the Wills Act, 1837, a gift by will by a person to his child or other issue is prevented from lapsing should the beneficiary die before the testator leaving issue living at the death of the testator, and such gift is to take effect as if such child or other issue

had died immediately after the testator. The property so given forms part of the deceased beneficiary's estate and is liable to Estate Duty accordingly (*re* John Scott, deceased, [1901] 1 K. B. 228). Where the accruer causes the total estate to exceed £15,000 it would seem that Legacy Duty and Succession Duty at £1 per cent. would not become payable on the original estate, as at the moment of death the deceased child had no more than a *spes successionis* which obviously had no value.

B.—Property Situate Out of Great Britain.

This property was not liable to Probate Duty but is made liable to Estate Duty if under the law in force before the passing of the F. A. 1894, it would have been liable to Legacy Duty or Succession Duty (F. A. 1894, s. 2 (2) as amended by F. A. 1923, s. 37 (1) and (2)) (*see* pages 231 and 317 as to the incidence of such duties).

Property situate outside Great Britain is divided into *moveable* and *immoveable*. The latter term includes lands and houses and all estates and interests therein, including leasehold property. The former term includes all other property, whether consisting of tangible objects such as furniture, stock-in-trade or farming stock, having a local situation or of intangible property such as debts, securities for money or shares.

Roughly speaking, the distinction corresponds to that between real and personal property, the main difference being that whereas leaseholds are included in the description of personal property they are not considered to be moveable property and so are included in the class of immoveables.

Absolute Ownership.

The liability of moveable property of which the deceased was absolute owner depends on the domicile of the deceased. (As to domicile *see* page 286.)

Moveable property outside Great Britain, whether located in a foreign country or in a Dominion or Colony, of which the deceased was absolute owner, is liable to Estate Duty when he dies domiciled in Great Britain, as it would have been liable to Legacy Duty under the law in force before the passing of the F. A. 1894.

Both moveable and immoveable property in Great Britain are liable to Estate Duty, whatever may be the domicile of the deceased (F. A. 1894, s. 1).

Whatever was the domicile of the deceased, his immoveable property outside Great Britain is not liable to Estate Duty. But where he was entitled to any such property which at his death was subject to a trust for sale under a British trust, such property devolves as an English asset, and is accordingly liable to Estate Duty as part of his estate, even though it may not have been sold at his death (Sudeley *v.* A.-G., [1897] A. C. 11, and *re* Smyth; Leach *v.* Leach, [1898] 1 Ch. 89).

Mortgages on immoveable property outside Great Britain devolving as personal property, are liable to Estate Duty, but only where the deceased was domiciled in this country (F. A. 1894, s. 2 (2), and Lawson *v.* Commissioners of Inland Revenue, [1896] 2 I. R. 418).

Settled.

As regards *settled* foreign or Colonial property, the liability to Estate Duty on the death of a life tenant is somewhat different and does not depend on the domicile of the deceased.

If at the death of a life tenant it is found that the property, originally foreign, is locally situate in this country, *e.g.*, invested in British securities, Estate Duty would be leviable because the property is situate in this country and passes on a death (F. A. 1894, s. 1). For example: *A* by will gives immoveable property situate abroad to

English trustees resident in this country upon trust to sell and the proceeds to be held upon trust for his wife *B* for life and on her death for others; and he empowers his trustees to invest the proceeds in British securities. On *A's* death, whether his domicile is situate in this country or not, no Estate Duty is, as has been explained, payable. But if at the death of *B* it is found that the proceeds of sale of such immoveable property are invested in British securities, Estate Duty would be leviable (A.-G. *v.* Johnson and Others, [1907] 2 K. B. 885). The result would be the same even if the property had not been sold, if on the death of *B* it were vested in trustees resident in Great Britain under an English settlement (*see infra*) (F. A. 1894, s. 2 (2)).

If on the life tenant's death property is situate outside Great Britain, the test of liability to Estate Duty depends upon whether under the law in force before the passing of the F. A. 1894, the property would have been liable to Legacy Duty or Succession Duty (*see* A.-G. *v.* Burns and Others, [1923] 2 K. B. 77, and consequent on this decision the amendment of F. A. 1894, s. 2 (2), effected by F. A. 1923, s. 37 (1) and (2), in the case of property passing on the death of a person who died on or after 16th April, 1923). If it is vested in trustees resident here under an English settlement, Succession Duty would have been payable and therefore Estate Duty is chargeable (F. A. 1894, s. 2 (2), and *in re* Cigala's Settlement Funds, 7 Ch. D. 351; A.-G. *v.* Jewish Colonization Association, [1901] 1 K. B. 123). For example: *A* by a deed made in English form gives moveable property abroad to English trustees resident in Great Britain upon trust for himself for life and on his death for persons resident abroad. On his death, Estate Duty is payable in respect of the property subject to the trust, though still locally situate abroad, and this is so

notwithstanding that *A's* domicile was foreign. The reason is that in order to administer the property and determine all questions relating to it, recourse would have to be had to the English tribunals, and therefore, under the law in force before the F. A. 1894, Succession Duty would have been chargeable (*see* page 318).

In general, in order to ascertain the liability to Estate Duty of foreign property comprised in a settlement, or foreign property passing on the death of a life tenant under a will which by reason of the testator's domicile being foreign was not liable on his death, it is necessary to determine the following questions :—

(1) Whether in fact at the date of the death of the deceased person the property has become situate in this country either by re-investment or by the sale of immoveable property and investment in British securities.

(2) Whether the property is vested in trustees resident in Great Britain under a British trust.

If the answer to either of these questions is in the affirmative, Estate Duty is leviable.

The incidence of Estate Duty is somewhat wider than that of Succession Duty, for Estate Duty is payable on all property passing which is actually situate in this country at the death. But in the case of Succession Duty mere situation is not sufficient. Succession Duty is not payable on moveable property in this country vested in foreign trustees under a foreign settlement. As regards property which on the death of a life tenant is situate out of Great Britain, the liability to Estate Duty follows that of Succession Duty, the incidence of which is more fully explained on page 319, and depends, as indicated above, upon whether the forum of administration is in this country or not.

Situation of Assets.

From what has been said above, it is necessary to attribute a locality to assets of an intangible nature, and the following general rules may be regarded as applicable for death duty purposes :—

(1) The locality of a security represented by a document of title, the property in which passes by delivery, is determined by the situation of that document at the deceased's death.

(2) The locality of a security not passing by delivery is determined by the situation of the register, entry upon which is necessary to complete the title of the owner of the security.

(3) The locality of debts and other *choses in action* is in the country where the debtor resides and where proceedings to enforce payment can be taken.

Thus bearer securities actually situate in Great Britain at the owner's death and stocks and shares registered in Great Britain constitute property in this country passing on such event within the meaning of ss. 1 and 2 (1) of the F. A. 1894, and are liable to Estate Duty whether they form part of the deceased's free estate or are property in which he had a life interest only, and as regards the latter, even though it would not have attracted Succession Duty by reason of its passing under a foreign settlement to a person domiciled abroad.

In attributing a locality to a registered security the locality of the borrowing government or municipality or of the property of the company is immaterial, nor, except in the following circumstances, is the locality of the operations of the company material. The exception is where a British company carrying on business in a colony establishes in the colony for the convenience of shareholders resident there

a separate branch register. In such circumstances, for Death Duty purposes shares registered on such register are, in the case of persons *domiciled* in Great Britain, deemed to be situated in this country (Companies (Consolidation) Act, 1908, s. 36 (*b*)).

The general rule as to registered securities implies that a share can only be registered at one and the same time on one register, but certain Colonial companies have established duplicate registers on any one of which it appears to be permissible to the shareholder to record the transfer of his security. For instance, in the Transvaal certain companies registered and with their chief office and register in that colony, where the central management and control abide, keep duplicate registers in England, and shares can be transferred on either register, but no transfer can be registered in England until the Transvaal death duties have been paid. In these exceptional cases, if the share certificates are in Great Britain on the death of the owner, the shares are considered to be English assets and liable to Estate Duty without regard to the domicile of the owner (*in re* Clark ; McKechnie *v.* Clark, [1904] 1 Ch. 294), but the Transvaal duty is in practice allowed against the value for Estate Duty.

If, however, the certificates are *not* in Great Britain, and the owner is not domiciled in Great Britain, such shares escape the British death duties.

As regards debts, the ordinary rule is that a simple contract debt is situate in the country where the debtor resides at the creditor's death and where payment can be enforced (*see* hereon Sudeley *v.* A.-G., [1897] A. C. 11). But in the case of a company which has domiciles or residences in different countries it has been decided that the Court may look at the terms of the contract and if the debt is in fact localized to one particular branch of the company, the country in which that branch is situate will be the

country in which the debt is due (New York Life Insurance Co. *v.* Public Trustee, [1924] 1 Ch. 477).

If, for example, a debt is due from a company which has its head office and general management in the United States, but the debt is, under the contract, properly payable by a branch of the company in this country, and is enforceable by process of law here, the debt is presumably an English *chose in action* situate in this country.

A specialty debt, on the other hand, is situate at the place where the specialty is found at the creditor's death (Commr. of Stamps *v.* Hope, [1891] A. C. 476). The only exception is provided by Revenue Act, 1862, s. 39, which, as adapted and incorporated in the F. A. 1894, enacts that specialty debts due from persons in Great Britain and Northern Ireland shall for death duty purposes be in the same position as simple contract debts without regard to the situation of the specialty at the death of the deceased.

In accordance with the rules given above, the following assets are considered to be situated in Great Britain, and would be liable to Estate Duty even if the owner died domiciled outside this country :—

(1) Foreign bonds to bearer actually in Great Britain at the death, the property in which can be fully transferred without any act done outside the jurisdiction of this country (Winans *v.* A.-G., [1910] A. C. 27).

(2) American rail and other certificates actually situate here at the death, which by reason of a signed transfer in blank endorsed thereon are marketable here and pass by delivery (Stern and Others *v.* The Queen, [1896] 1 Q. B. 211).

(3) Inscribed stock of a Colony which is transferable in the books of the Bank of England or elsewhere in Great Britain.

(4) Stocks and shares of a foreign or Colonial company registered and exclusively transferable on a register in Great Britain; or registered on a register in Great Britain (although not *exclusively* transferable on that register) with the relative certificates also in Great Britain (*re* Clark; McKechnie *v.* Clark, [1904] 1 Ch. 294).

(5) Stocks and shares of a British company registered on a register kept in Great Britain, regardless of the field of operations of such company (*cf.* A.-G. *v.* Higgins (1857), 2 H. & N. 339 and Brassard *v.* Smith, [1925] A. C. 371). Also the stocks and shares of such a company, when registered on one of its colonial registers, if owned by a person domiciled in this country (Companies (Consolidation) Act, 1908, s. 36 (*b*)).

(6) Foreign property (both moveable and immoveable, but subject as regards the latter to the recognition by the State in which the immoveable property was situate of the English doctrine of conversion as applied to immoveable property forming part of the assets of a partnership) of a British firm carrying on business abroad (Stokes *v.* Ducroz, 62 L. T. 176). But a share in the assets of a partnership which is carried on, and the assets of which are situate abroad, is a foreign asset, and therefore only liable where the deceased partner was domiciled in this country (see Commissioner of Stamp Duties *v.* Salting, [1907] A. C. 449).

(7) Foreign or Colonial realty subject to a trust for sale, vested in English trustees under an English settlement (A.-G. *v.* Johnson and Others, [1907] 2 K. B. 885).

As regards Policies of Assurance *see* page 40 *et seq.*

For the purposes of the Estate Duty payable to the Imperial British Exchequer (with the duties payable to which Exchequer this work is alone concerned), Great Britain includes England and Wales, Scotland and the adjoining islands, but neither the Channel Islands nor the Isle of Man.

As regards Ireland the position has been somewhat complicated owing to the difference of the dates on which the Northern Irish and the Irish Free State Parliaments have respectively been set up; and, as regards the Irish Free State, owing to the further fact that although that State came legally into being on the 6th December, 1922, the scheme of taxation then previously existing in the United Kingdom (exclusive of Northern Ireland) was temporarily continued until the 31st March, 1923, by the express terms of s. 2 of the Irish Free State Constitution Act, 1922.

The provisions of this Act of the United Kingdom Parliament synchronise in this connection with Article 74 of the Irish Free State Constitution as passed by the Parliament constituted in Ireland pursuant to the Irish Free State (Agreement) Act, 1922.

In the result as regards claims for Estate Duty in connection with deaths occurring since the 31st March, 1923, all property situate in Ireland ranks as Colonial or foreign property for the purposes of the Estate Duty payable to the British Imperial Exchequer. When, however, the death occurred between the 21st November, 1921, and the 1st April, 1923, it is only property situate in Northern Ireland that is so treated. But where the death occurred before the 22nd November, 1921, the territorial area for the duty in question was the United Kingdom of Great Britain and Ireland as it then existed, property situate out of the United Kingdom only coming within the charge of the duty subject (as above explained) to the terms of s. 2 (2) of the F. A. 1894.

The Death Duty enactments of the United Kingdom Parliaments passed since the 31st March, 1923, are, it will be found, limited in their operation to Great Britain only. Further, in their relation to claims arising in connection with post-March 1923 deaths, the pre-April 1923 Death Duty enactments of that Parliament have, by means of certain statutory rules and orders, been adapted to meet the new circumstances. The two principal adaptation orders in question are the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922 (S. R. & O., 1922, No. 80), made under powers to that effect conferred by the Government of Ireland Act, 1920 (10 & 11 Geo. 5, c. 67), and the Irish Free State (Adaptation of the Taxing Acts) Order, 1923 (S. R. & O., 1923, No. 405), made under the powers to that effect conferred by the Irish Free State (Consequential Provisions) Act, 1922 (13 Geo. 5, sess. 2, c. 2). For the purpose of current claims for duties leviable in Great Britain it may be said, speaking in general terms, that these Orders (*inter alia*) make the expression "the United Kingdom," appearing in the pre-April 1923 Acts, read as "Great Britain."

The moveable property in this country at a foreign embassy of a foreign sovereign, foreign ambassador or other agent, though actually situate here, is considered to be constructively situate abroad (unless the deceased died domiciled here) and is not therefore liable to Estate Duty on his death. Subject as above, all property in this country, whether owned by a foreign sovereign or his ambassador, or by any other member of his court, is chargeable with Estate Duty in the event of the owner's death.

C.—Property of which the Deceased was Competent to Dispose.

This heading includes property also discussed under heading "A," and under "B," except so far as settled property was referred to (F. A. 1894, s. 2 (1) (*a*)).

A person is said to be competent to dispose when he has such an estate or interest in property as would, if he were under no disability, enable him to dispose of it as he thought fit (F. A. 1894, s. 22 (2) (*a*)). It is immaterial that the deceased by reason of some disability (as, for instance, infancy, lunacy, or coverture) was not for the time being legally able to dispose of the property. If he would have been competent to dispose had he not been subject to the disability, Estate Duty is payable.

A person under a disability of the kind referred to, where it prevents him for the time being from dealing with property as he wishes, is said to be not "*sui juris.*"

Included under this heading, besides the deceased's free estate, are the following :—

(1) Entailed property (F. A. 1894, s. 22 (2) (*a*)).
(2) Property over which the deceased had a general power of appointment (*ibid.*).
(3) Money which the deceased had a general power to charge on land (F. A. 1894, s. 22 (2) (*c*)).
(4) Property of a married woman.

The deceased's share of property under a joint tenancy also constitutes property of which he was competent to dispose, but joint property is separately considered under heading "F."

A person is also deemed competent to dispose if during his lifetime he makes a settlement on other persons but reserves power to revoke the trusts, but not if such power is only exercisable with the consent of another person or other persons.

1. Entailed property of which the deceased was tenant in tail in possession, is liable to Estate Duty on his death. For example : real estate is given to *A* for life, and on his death to *B* his son in tail male ; on *A's* death *B* succeeds as tenant in tail, and if he dies without having disentailed the property and without having disposed of it by his will,

it would descend to his eldest son. *B* is therefore said to be tenant in tail and (apart from his lately gained power of disposition by will) he is competent to dispose of the property because he can, if he chooses, disentail: that is, bar the entail, and so vest the property in himself absolutely. If, however, he wishes to bar the entail during the life of *A*, who is technically described as the "protector of the settlement," he must obtain *A's* consent, otherwise he would only create what is termed a "base fee": that is, the property vests in him absolutely (subject, of course, to the life interest) so long as issue, capable of taking under the entail, exist. In default of such issue it would pass to the persons who were ultimately entitled under the terms of the original settlement. If *B* dies entitled to the base fee, it will of course form part of the free estate passing on his death. Formerly only real property could be entailed but now personal property may be as well (L. P. A. 1925, s. 130), and further a tenant in tail in possession (unless the possibility of issue is extinct) may now dispose of the property by will by a specific devise or bequest (*ibid.*, s. 176).

If a person who is entitled to an estate tail dies before he gets the estate in possession and if subsequent limitations under the settlement subsist, Estate Duty is not payable on his death (F. A. 1894, s. 5 (3)). For instance, if in the above case *B* dies during *A's* life, without having disentailed or without leaving issue to support his base fee, and the settlement contains further limitations disposing of the property on *B's* death, Estate Duty would not be payable on *B's* death because his interest in the property has failed before it became an interest in possession.

2. Property over which the deceased had a general power of appointment is defined as property over which he had such a power or authority that he can dispose of it

as he thinks fit whether by deed or will (F. A. 1894, s. 22 (2) (*a*)). For example: *A* by will gives *B* £1,000 for his life and on his death directs it to go in such manner as *B* by will shall appoint; and in default of *B* exercising the power, to *C* absolutely. *B* is said to have a general power of appointment over the £1,000 because he can give it by will to whomsoever he pleases and it therefore is property of which he is competent to dispose and so is liable to pay Estate Duty on his death. This liability does not depend upon *B* exercising the power, for if for any reason he does not choose or omits to exercise it and the property passes to *C*, it nevertheless is liable to Estate Duty on *B's* death.

If the property over which the deceased had a general power of appointment consisted of moveable property situate out of Great Britain it would not be liable to Estate Duty unless vested in a British trustee resident in this country (F. A. 1894, s. 2 (2); *re* Wallop's Trusts, 33 L. J. Ch. 351; and *in re* Cigala's Settlement, 7 Ch. D. 351), or unless the domicile of the deceased, if he exercised the power, were situate in Great Britain.

Where the power of disposal is exercisable in a fiduciary capacity, or exercisable as a tenant for life under the Settled Land Act, 1925, or as mortgagee, the property is not liable to Estate Duty on the death of a person who merely has such a power, although it may otherwise be liable as being property passing on the death.

3. Money which the deceased had a general power to charge on property is liable to Estate Duty (F. A. 1894, s. 22 (2) (*c*)). Thus *A*, who dies after the F. A. 1894, gives a house to his wife for life with power by her will to charge on it a sum of £200, and, subject thereto, he gives the house to his son. On the widow's death Estate Duty is leviable in respect of the £200 as forming property

of which she was competent to dispose, and this is so whether she exercises the power or not.

4. A married woman is deemed competent to dispose of all her property whether it was given to her for her separate use or not; and this is so notwithstanding that owing to the marriage having taken place before the passing of the Married Women's Property Acts the husband may have rights over his wife's estate. In cases of this kind she in fact has such an interest in the property as would, if she were *sui juris* (that is, not under coverture), enable her to dispose of it as she thought fit (F. A. 1894, s. 22 (2) (*a*) and (*b*)). If, however, the deceased had been married before the passing of the said Acts and her husband had acquired an absolute interest in her personal property not belonging to her for her separate use, Estate Duty would not apparently be payable.

By the Married Women's Property (Scotland) Act, 1920, which applies where the husband is domiciled in Scotland or where there is heritable property in that country, a wife is declared to have the same powers of disposal with regard to her estate as if she were unmarried, and gifts between husband and wife are to be irrevocable by the donor.

D.—Donationes Mortis Causa.

Frequently a person when on his death-bed makes a gift of some article or sum of money to a friend or relation which is only to take effect on the donor's death, there being a condition that if he recovers he shall resume his property in such gift. Such a disposition is called "a *donatio mortis causa*" and is liable to Estate Duty on the death of the donor (F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38, as amended by Customs and Inland Revenue Act, 1889, s. 11).

It should be noted that not every subject of property

can be given as a *donatio mortis causa.* In the first place, neither real nor leasehold property can, nor can stocks and shares without a transfer deed (Moore *v.* Moore, L.R. 18 Eq. 474). The following have, however, been held capable of being so given: viz., furniture and other articles the property in which can be transferred by delivery (*i.e.*, merely handing them over to the donee), promissory notes (Veal *v.* Veal, 27 Beav. 303), but not of the donor (*re* Leaper; Blythe *v.* Atkinson, [1916] 1 Ch. 579), bills of exchange (*in re* Mead; Austin *v.* Mead, 15 Ch. D. 651), and cheques of a third person (*see re* Leaper above), but not of the donor unless cashed in his lifetime (Bouts *v.* Ellis, 4 De G.M. & G. 249), banknotes (Miller *v.* Miller, 3 P. Wms. 357), bonds (Snellgrove *v.* Bailey, 3 Atk. 214), assurance policies (Amiss *v.* Witt, 33 Beav. 619), bank deposit receipts (Cassidy *v.* Belfast Banking Co., 22 L.R. Ir. 68), money in the Post Office Savings Bank by delivery of the pass book (*in re* Weston; Bartholomew *v.* Menzies, [1902] 1 Ch. 680), and an exchequer bond acquired through the Post Office, by delivery of the exchequer bond deposit book (*re* Lee; Treasury Solictor *v.* Parrott, [1918] 2 Ch. 320). There are three requisites for a valid *donatio mortis causa:* viz.—

(1) The gift must be made in contemplation of the expected death of the donor (Duffield *v.* Elwes, 1 Bligh N. S. 497).

(2) There must be an actual or constructive delivery of the gift in the donor's lifetime. By a constructive delivery is meant the handing over of some thing or symbol which, though not the gift itself, enables the donee to obtain possession of the gift (*re* Wasserberg; Union of London and Smiths Bank *v.* Wasserberg, [1915] 1 Ch. 195).

(3) It must be conditional, so that it only takes full effect on the death of the donor from the

illness then upon him. If he recovers the gift is defeated. This condition may be expressly stated or implied from the circumstances of the case (Staniland *v.* Willott, 3 Mac. & G. 664)

Small donations of this description not amounting in all to more than £20 would be disregarded for Estate Duty purposes ; but those above £20 are apparently liable though they do not exceed £100.

Legacy Duty in connection with the donor's death is chargeable in respect of death-bed gifts (Revenue Act, 1845, s. 4), and they are liable to satisfy his debts in case of a deficiency of the donor's other assets.

The Estate Duty on gifts of this kind is not a testamentary expense. It is a charge on the subject-matter of the gift, and if paid by the executor can be recovered by him from the donee (*re* Hudson ; Spencer *v.* Turner, [1911] 1 Ch. 206).

E.—Gifts Inter Vivos.

It often happens that a person makes a gift in his lifetime of part of his property, usually to his wife, children, or other relations. Such a disposition is called a *gift inter vivos*, and whether it becomes liable to Estate Duty or not on the donor's death depends on certain considerations.

Gifts Within Three Years.

If the gift is made within three years of the donor's death, Estate Duty is payable (*see* s. 59 F. A. 1910, and the sections mentioned therein). The following exceptions are, however, made :—

(*a*) Immediate gifts made in consideration or in contemplation of marriage (F. A. 1910, s. 59 (2)). For instance, *A*, on the occasion of his daughter's marriage, settles £5,000 upon her and dies within three years. No Estate Duty would be payable on his death. Nor would it be payable in respect

of a sum covenanted in a marriage settlement to be paid on the donor's death which sum was in fact paid by him in his lifetime and within three years of his death.

(*b*) Immediate gifts for public or charitable purposes made more than a year before death (F. A. 1910, s. 59 (1)). But all such gifts made within a year of death would be liable to duty. A gift to a needy individual for his personal benefit can doubtfully be regarded as a gift for charitable purposes.

(*c*) Immediate gifts which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased and to have been reasonable, having regard to the amount of his income or to the circumstances (F.A. 1910, s. 59 (2)). Thus *A*, a well-to-do man, makes allowances of £250 per annum to each of his children. On his death no claim for Estate Duty would arise in respect of the payments made within three years of his death. Similarly as to other annual payments, such as pensions to old servants, subscriptions which the deceased had been in the habit of making and which are reasonable having regard to the circumstances. The proportion of such annual payments to the date of death is not in strictness a permissible deduction in the Inland Revenue affidavit (F.A. 1894, s. 7 (1) (*a*)). Gifts out of capital are not regarded as normal expenditure.

(*d*) Immediate gifts which in the case of any donee do not exceed in the aggregate £100 in value or amount (F.A. 1910, s. 59 (2)). This

prevents Estate Duty from being chargeable on small gifts such as birthday gifts, however numerous, so long as in the case of any one donee they do not amount to £100.

Gifts with Reservation.

Apart from gifts made within three years, gifts or voluntary dispositions made at any time during the donor's life may be liable to duty. Thus, at whatever time a gift is made, if *bonâ fide* possession and enjoyment is not immediately taken and thenceforth retained by the donee, to the entire exclusion of the donor or of any benefit to him by contract or otherwise, Estate Duty is payable on the death of the donor, and the donee is liable to account for it (*see* s. 59 F. A. 1910, and the sections mentioned therein).

It comes to this: that Estate Duty is payable on all voluntary dispositions made by a person during his lifetime unless—

(*a*) The donee assumes possession and thenceforth retains the exclusive and beneficial control of the property;

(*b*) The donor absolutely gives up all his interest at the time, or at least three years before his death, and retains no benefit by contract or otherwise;

(*c*) The transaction is completed more than three years before the donor's death.

It is sometimes a matter of considerable difficulty to determine whether a transaction carried out more than three years before the death is a gift, or whether it is a *bonâ fide* bargain and sale for full consideration in money or money's worth, or whether it is a transaction partaking partly of bounty and partly of purchase; and the following

rules are given to assist in doubtful cases of this kind :—

(1) Where the reservation to the donor is equal to the average annual income of the property, the transaction is in all cases a gift *inter vivos* and liable to Estate Duty on the donor's death. For example : *A* more than three years before his death gives a house to his son, of the value of £30 per annum, on condition that the son pays him an annuity of £30 per annum. The real effect of the transaction is to reserve a life interest to the father, and Estate Duty is therefore chargeable at his death on the principal value of the property whatever may have been the date of the gift.

(2) Where a gift of money is made, and the amount reserved to the donor is approximately equal to the ordinary rate of interest on the amount, the transaction is a gift *inter vivos* and does not cease to be so merely because the benefit reserved is higher than the average income produced by the property (A.-G. *v.* Johnson, [1903] 1 K. B. 617). The result is the same whether the reservation of the annual sum is to the deceased only, or to him for his life, and to other persons for their lives in succession (*ibid.*). For instance, *A* gives a sum of £500 to a charity, the arrangement being that the latter shall pay an annuity of £25 to him for life, and on his death to his widow for life. On *A's* death Estate Duty is chargeable on the full sum of £500 ; for in effect *A* has made a gift of this sum subject to payment of the income at 5 per cent. to him and his wife during their successive lives.

(3) Where the reservation is greater than the average income of the property, but the value of such reservation for the life of the donor at the

date of the transaction is less than the value at that time of the property itself, the transaction is a gift and Estate Duty is payable. As an example, a farmer aged sixty gives his farm worth £50 per annum to his son on condition that the latter pays him an annuity of £70 for his life. The value of the farm at say twenty years' purchase is £1,000, while the value of the annuity, if calculated according to the Succession Duty tables, is £383 4s. The transaction is clearly, therefore, not based upon full consideration in money or money's worth, and Estate Duty is payable on the value of the farm on the death of the father (*see* Grey (Earl) *v.* A.-G., [1900] A. C. 124, and *re* Wm. Clark, deceased, (1906) 40 Ir. L. T. R. 117).

(4) Where the *value* of the reservation in cases similar to No. 3 is approximately equal to or is greater than the value of the property, the transaction is a *bonâ fide* bargain and sale, and no Estate Duty is chargeable (F. A. 1894, s. 3 (1), and *see* A.-G. *v.* Boden and Another, [1912] 1 K. B. 539). For example : *A*, a spinster aged fifty-five, possessed of cottage property which requires considerable annual repairs and is troublesome to manage, agrees with a friend *B*, who is a builder, to convey the property to him in consideration of an annuity of £25 per annum for her life. The value of this annuity is £275 19s. 6d., while the value of the property is about £280. In this case it is clear that no element of bounty on the part of *A* entered into the transaction, and no Estate Duty is therefore payable on her death in respect of the property.

(5) Where the donee has to put his hand into his own pocket and the amount he pays and the

value of any other reservation to the donor is equal to or greater than the value of the property, no Estate Duty is chargeable. The mere fact that the consideration is somewhat less than the full value of the property is not of itself sufficient to show that the transaction was not a *bonâ fide* bargain and sale (*re* Weir & Pitts Contract, 55 S. J. 536). Where the consideration is considerably less than the value of the property, but it appears that the element of part-purchase entered into the transaction, a deduction could be claimed in respect of the amount which the donee had actually paid out of his own pocket (F. A. 1894, s. 3. (2), and *re* Bateman, deceased, A.-G. *v.* Wreford Brown, [1925] 2 K. B. 429). For example: *A*, aged sixty, conveys property worth £30 per annum to his son *B*, the arrangement being that the son shall pay the father's debts, amounting to £300, and also an annuity of £20 per annum during his (the father's) life. The value of the property is £600; the value of the annuity is £194 8s.; so that it cannot be said that the transaction was based upon full consideration in money or money's worth; but the fact that the son paid £300 down out of his own pocket must be regarded as a part consideration in money, and a deduction in respect thereof could be claimed.

In cases of this kind, however, and those which are near the border line between a gift and a purchase, the whole of the circumstances must be regarded and each case considered on its merits. Thus the state of health of the donor at the date of the transaction; the relationship, if any, subsisting between him and the donee; any special circumstances connected with the property, such as a considerable contingent liability for dilapidations which might have to be met; difficulty and expense

in managing the property and the impending necessity of considerable repairs; are all factors which should be taken into account. Past services rendered by the donee to the donor cannot as a general rule be taken into account as they may not be regarded as providing a valuable consideration for any agreement subsequently entered into between the donor and donee—unless perhaps the services were rendered in pursuance of a definite arrangement that they were to be paid for subsequently.

The benefit reserved to the donor must apparently be determinable at or by reference to the deceased's death, so that if it ceases or he releases it more than three years (*see* A.-G. *v.* Cobham and Others (1904), 90 L. T. 816) before his death Estate Duty would not be payable.

The benefit need not be reserved out of the gift itself to attract duty. It is sufficient if there is a benefit reserved at the time the transaction is carried out. For instance, if *A* gives a house to *B*, the arrangement being that the latter pays *A* an annuity about equal to the net rents for his life, and enters into a bond to do so, Estate Duty would be payable on the death of *A* in respect of the house (Lord Advocate *v.* Wilsons (1894), 21 Rett. 997, a case dealing with Account Stamp Duty under the sections incorporated by F. A. 1894, s. 2 (1) (*c*)).

It is, however, essential that the benefit reserved should be enforceable at law (A.-G. *v.* Seccombe, [1911] 2 K. B. 688). For example: *A* gives his house and the furniture in it to his wife absolutely. At *A*'s death it is found that he was living in the house up to the date of his death, and therefore it might be urged that he had not entirely divested himself of all benefit and enjoyment from the property. As, however, the donee could presumably sell the property or deal with it as she thought fit, Estate Duty would not be payable as no *enforceable* benefit was reserved by *A*.

Where the gift included several items of property and the benefit is reserved out of one only, Estate Duty would only be payable on that out of which the benefit is reserved ; but where the reservation involves the whole of the gift or is a provision outside the property itself, Estate Duty is chargeable on the whole of the property, however small the benefit reserved.

The following examples may be given :—

(1) Blackacre, worth £60 per annum, is conveyed by *A* to *B* subject to a rent-charge of £10 per annum payable to *A* for life. The whole property is chargeable with Estate Duty on *A's* death (Grey (Earl) *v.* A.-G., [1900] A. C. 124).

(2) Blackacre and Whiteacre, each worth £30 per annum, are conveyed by *A* to *B*, subject to a rent-charge of £10 per annum, issuing exclusively out of Blackacre, payable to *A* for life. On *A's* death after three years, Blackacre only is chargeable with Estate Duty.

(3) Blackacre and Whiteacre, each worth £30 per annum, are conveyed by *A* to *B*, and *B* gives a bond to pay *A* an annuity of £10 for life, the annuity not being charged on any part of the property. Both properties are chargeable with Estate Duty on *A's* death (*cf.* Crossman *v.* The Queen (1886), 18 Q. B. D.256).

(4) Blackacre is conveyed by *A* to *B*, and *B* covenants on *A's* death to pay *A's* debts—or *A* retains power to charge a capital sum on the property. Blackacre is chargeable with Estate Duty on *A's* death (Grey (Earl) *v.* A.-G., *supra*, and *re* William Clark, (1906) 40 Ir. L. T. R. 117).

In no case can deduction be taken for the value of the rent-charge, capital sum, etc., and the principles illustrated above are applicable equally to personal property.

Where the subject-matter of the gift is given upon trust for the benefit of the donee or donees, there must inevitably be a contingent resulting trust for the donor or settlor on failure of all the specified objects, but this contingent interest does not constitute a reservation for the present purpose, even if such ultimate trust is an express one (*In re* Cochrane, [1906] 2 I. R. 200).

This case (*re* Cochrane) involved a further decision. The facts were that the deceased gave £15,000 to trustees to pay out of the income during the life of his daughter £575 per annum to her and the surplus to himself, and on her death to hold the capital for her issue or in default for himself absolutely. Estate Duty was held to be payable only on the capitalized value of the surplus income. It was considered that the settled fund could be severed into two parts, and that, as regards the part required to produce the annuity, the deceased was (save as to the ultimate trust, which has been dealt with above) excluded from all benefit. That part alone was the subject of the gift ; the surplus income was not given, and therefore it could not constitute a reservation *out of* something which *was* given.

It will be observed that the case is roughly the converse of examples (1), (2) and (4), *supra*, where the benefit retained by the donor in effect *issued from the whole* of the property, and the principle can apply only so far as the immediate and permanent benefit to the donee or donees is a fixed one.

In re Cochrane was decided on s. 38 (2) (*a*) of the Customs and Inland Revenue Act, 1881, as amended and incorporated, and is presumably not relevant in cases falling under s. 38 (2) (*c*), the essence of which is a reservation for the life of the grantor.

Where the donor reserves no actual benefit but has a power to revoke the gift and retains this power up to the date of his death, Estate Duty would be payable on

his death on the full value (F. A. 1894, s. 22 (2) (*a*), and Lord Advocate *v.* Gunning's Executors, [1907] S. C. 800).

In all cases of a gift with reservation, if the donor should release the benefit more than three years before his death, no Estate Duty is chargeable on such event taking place. Moreover, in the case of a charity, if the release takes place within three years but more than one year before death, Estate Duty will not be payable (F. A. 1910, proviso to s. 59 (1)).

A similar result would follow where the deceased had merely a general power of appointment over property and he absolutely releases the power more than three years before his death. As regards the release or surrender within three years, of a life interest to the person entitled in reversion, *see* page 75.

No Estate Duty is payable on the death of the deceased in respect of property held by him as trustee for another person under a disposition not made by the deceased or under a disposition made by him more than three years before his death, where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately on the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise (F. A. 1894, s. 2 (3)).

It should be noted that certain formalities are necessary to complete an *inter vivos* gift. For instance, chattels such as furniture, jewellery, etc., can be given by delivery to the donee, provided the latter assents to the gift (Cochrane *v.* Moore, 25 Q. B. D. 57). They may also be transferred by a deed, and in that case actual delivery is not necessary. Stocks and shares in railway or other companies formed under The Companies Clauses (Consolidation) Act, 1845, must be transferred by deed (*ibid.*, s. 14). Shares in joint stock companies must be transferred in the manner

provided by the Articles of Association of the company, and in default of any such provision by instrument in writing signed by both transferor and transferee (*see* Companies (Consolidation) Act, 1908). Policies of assurance must be assigned by instrument in writing, and notice given to the company (30 & 31 Vict. c. 144, s. 3). Freeholds and leaseholds must be transferred by a properly executed deed (L. P. A. 1925, s. 52). Another method of making a valid gift *inter vivos* is by way of trust: that is, the donor declares that he stands possessed of the property in trust for the donee. Such a document must in the case of freeholds and leaseholds be evidenced by writing signed by the donor (L. P. A. 1925, s. 53 (1)); but in the case of moveable property, unless the gift is made in consideration of marriage (Statute of Frauds, s. 4), the declaration of trust may be verbal. A verbal trust must, however, be clearly proved (Peckham *v.* Taylor, 31 Beav. 254).

A gift *inter vivos* which is imperfectly made by reason of the proper formalities being omitted, if made perfect within three years of the death of the donor, will be liable to Estate Duty. If it remains imperfect through the omission of any essential thing requiring to be done by the intending donor, the property will form part of the free estate of the latter, there being "no equity to perfect an imperfect gift." An omission which can be repaired by the donee without recourse to the donor, such as the stamping or registration of a document, is apparently not material.

The motive for making a gift is not material, so that gifts made within the period under a moral obligation are liable to Estate Duty (A.-G. *v.* Chamberlain (1904), 90 L. T. 581).

Gifts *inter vivos* of personalty situate out of Great Britain are not liable to Estate Duty. Such property would not have been liable to Legacy Duty or Succession Duty under

the law in force before the F. A. 1894, and in view of s. 2 (2) of that Act it is therefore not liable to Estate Duty.

The date at which the value of a gift *inter vivos* is to be ascertained for the purposes of duty is the date of death of the donor and not the date of the gift (F. A. 1894, s. 7 (5), and *cf.* A.-G. *v.* de Préville, [1900] 1 Q. B. 223). The original property taken by the donee within the meaning of the sections incorporated into s. 2 (1) (*c*) of the F. A. 1894 is deemed to pass and not the proceeds of sale or any property substituted for it before the donor's death takes place. If, however, the property is destroyed or ceases to exist before the donor's death, as where furniture is destroyed by fire or a valuable animal dies, no duty would be payable.

Neither Legacy Duty nor Succession Duty is payable at the death of the donor in respect of out-and-out gifts ***inter vivos*** made by him. Where, however, there is an enforceable beneficial reservation to the donor which ceases on his death (as of a life interest or an annuity) Succession Duty may be chargeable on the cesser of such interest (S. D. A. 1853, s. 7).

F.—Joint Property.

The distinguishing feature of joint tenancy is that upon the death of one joint tenant the entirety of the property vests automatically in the survivors or survivor. As it happens frequently that the legal and the beneficial ownership of property do not coincide, it should be observed that only the cases where the beneficial interest devolves by survivorship are dealt with here. The legal ownership is immaterial in relation to the Death Duties; it may, for example, be vested in trustees and be unaltered by the death. On the other hand, a beneficial share of any property, which devolves not by survivorship but to the representatives (as such) of the deceased owner, is, of course, part of his free estate.

In a true joint tenancy the interests of the joint tenants must be equal and identical in every respect. Any one of them can in his lifetime acquire full dominion over his share by severing the joint tenancy or he can dispose of it as he thinks fit, in which event the joint tenancy will, so far as his share is concerned, be severed by that disposition. The unsevered share of a deceased joint tenant, although it accrues to the other joint tenants by survivorship, is in consequence property of which he was competent to dispose and liable to Estate Duty as such (F. A. 1894, s. 2 (1) (*a*)).

But the liability to duty may extend further, for where the deceased, having been absolutely entitled to property, has caused it to be transferred to or vested in himself and any other person jointly, or where having been absolutely entitled to property, he has effected with it a purchase or investment in the joint names of himself and any other person, either by himself alone or in conjunction or by arrangement with any other person, so that on his death the beneficial interest therein or in some part thereof accrues by survivorship to such other person, the whole property is deemed to pass on the death of the deceased for the purpose of attracting Estate Duty (F. A. 1894, s. 2 (1) (*c*), incorporating Customs and Inland Revenue Act, 1881, s. 38, as amended by Customs and Inland Revenue Act 1889, s. 11).

The section, however, is modified in application. If the same person is entitled to the income of property both before and after a death, the property does not, by reason of a mere change in his title, "pass" on that event (*re* Townsend, [1901] 2 K. B. 331), and it is usually conceded that under analogous conditions property shall not be "deemed to pass." If therefore *A* provided the whole or the larger share of the purchase money for property which he and *B* hold jointly, and *B* is entitled (as he always is in a *true* joint tenancy) to a full half-share of the income, and

A dies more than three years after the purchase, the claim for duty will be limited to *A's* severable half-share. Cases of this kind are not treated as gifts with reservation by *A*.

As the practical effect of this important provision (F. A. 1894, s. 2 (1) (*c*)) depends on the rights of the joint owners *inter se*, it is necessary to examine those rights in some detail.

Where *A* buys property in, or transfers property into, the joint names of himself and *B*, an intention is presumed and given effect to in equity, that *B* shall be a mere trustee under a "resulting trust" for *A*, unless *A* is the husband or father of, or stands *in loco parentis* to, *B*, in which case *A* is presumed to intend to "advance" or benefit *B*. Either presumption may be rebutted by evidence of an actual intention to the contrary on the part of *A*.

If a primary resulting trust takes effect or if a primary presumption of advancement is rebutted, the property is free estate of *A*. An interesting example is the case where *A* is a married woman and has provided out of her separate estate the purchase money for property which is placed in the joint names of herself and her husband *B*. Here, in the absence of further evidence, *B* is a trustee and on his death in *A's* lifetime no duty will be payable.

Up to this point the presumptions are well settled, and are applicable equally to every kind of property, but the *extent* of the donee's interest, in the case of advancement, is less clear. Almost all the reported cases were decided after the death of the donor, so that only the destination of the capital on his death, and not the enjoyment of the income during the joint lives, was in question. As regards such enjoyment, which is of essential importance for the present purpose, there is a notable difference between land on the one hand and pure personalty on the other. This is due to the operation of s. 53 of the L. P. A. 1925. (replacing ss. 7, 8 and 9 of the Statute of Frauds),

which prohibits the creation or disposition of any interest in, or trust respecting, land, except by writing, but does not affect resulting, implied or constructive trusts. The expression "land" (not "real property") is important. Although land held in joint tenancy is now held on trust for sale (L. P. A. 1925 s. 36) it is still land within the meaning of the Act, and so is leasehold property (*ibid.*, s. 205 (ix)). The definition of land, however, expressly excludes an undivided share of land, *i.e.*, the interest of a tenant in common, which is also subject to a trust for sale. Possibly therefore the latter interest can be the subject of an orally declared trust.

When the second party takes beneficially, the necessary writing is found in the conveyance or assignment to him and the donor. The only kind of "resulting, implied or constructive" trust which can arise in these cases is a resulting trust in favour of the "donor." Oral evidence is admissible only to support or rebut the above presumptions. Without writing there can therefore be no enforceable arrangement intermediate between an out-and-out resulting trust and out-and-out advancement. If advancement is established, it takes effect immediately, and the donor and donee are true joint tenants (Dunbar *v.* Dunbar, [1909] 2 Ch. 639). The consequence may be illustrated by the common case of a husband, *A*, buying a house and having it conveyed to himself and his wife, *B*, as joint tenants. Here, *primâ facie*, advancement is intended and if *B* dies first, Estate Duty is payable on her half share. On the other hand, if *A* dies first, having survived the purchase by three years, duty is similarly payable on half only. It makes no difference in either event that *A* may in practice have put the rents in his own pocket.

In view of the provision in s. 16 (4) of the L. P. A. 1925, that nothing in the Act shall alter any duty in respect

of land, the share of a deceased joint tenant is still chargeable as real property.

As regards pure personalty, interests and trusts can (within limits) be created and dealt with by word of mouth. Cases in which definite trusts have been formulated, and in which the placing of the property in the joint names is mere machinery for carrying the trusts into effect, should be regarded as parol settlements, and hardly fall under the present heading. Practically the only direct decision on the rights of the parties during the joint lives, in the absence of express evidence of the donor's intention, is to be found in Fowkes *v.* Pascoe (L. R. 10 Ch. App. 343), where James, L.J., said (at page 351), "It was obviously the intent and meaning . . . (as it may be taken to be universally in like gifts) that the donor should receive the income during her life . . ." So where *A* makes an investment in, or transfers an investment into, the joint names of himself and *B* (his wife or child or a person he is shown to have intended to benefit), the property is held, in the absence of further evidence upon trust for *A* during the joint lives with remainder to the survivor absolutely. If *B* dies in the lifetime of *A*, no duty is claimed, because *B's* interest failed before it became an interest in possession (F. A. 1894, s. 5 (3)).

But if *A* dies first, however long after the purchase or transfer, Estate Duty is payable on the whole of the property (*ibid.*, s. 2 (1) (*c*)—the principle of *re* Townsend not applying).

In cases where the joint tenants have contributed the purchase money for their property in unequal shares, s. 2 (1) (*c*) is applicable, in the manner explained above, to so much of the property as was purchased or provided by the deceased. For example, where *A* and his son *B* invest in stocks and shares in their joint names £1,000, of which *A* finds £700 and *B* £300, and on the death

of *A*, who dies first, the investments are worth £1,200, Estate Duty is payable on $\frac{700}{1000}$ of £1,200=£840, that being the proportion attributable to *A's* money. If, instead of *A*, *B* had died, duty would have been payable on $\frac{300}{1000}$ of £1,200=£360 (but *primâ facie* this share would have been part of his free estate under a resulting trust). Where the share of which the deceased was competent to dispose is greater than the share which he provided, duty is payable on the former. If the £1,000 above had been used to purchase land, and *B* had died first, the liability to duty would have extended to his severable half-share.

Where property is held jointly, whether in true joint tenancy or not, it may happen that Estate Duty is chargeable on a share thereof either on the ground that the deceased was competent to dispose of it or under s. 2 (1) (*c*) of the F. A. 1894, and on a further share as the subject of a gift *inter vivos*. An obvious example is the purchase of land by a father in the joint names of himself and his child. On the death of the former within three years of the purchase, duty is of course payable in respect of the entirety. In such cases the whole is treated as joint property in connection with the option to treat joint property as "settled" for purposes of aggregation (*see* page 91) and no distinction is either made or allowed in this respect between the two moieties.

G.—Policies of Assurance, also Annuities or other Interests Purchased or Provided by the Deceased.

Under this heading are considered—

(*a*) Policies of assurance belonging absolutely to the deceased at his death and forming part of the free estate which passed under his will or intestacy.

(*b*) Policies effected by the deceased on his life where wholly kept up by him for the benefit

of a donee, whether nominee or assignee, or a part of the policy moneys in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(*c*) Those provided by the deceased, either by himself alone or in concert or by arrangement with any other person, in respect of the benefit accruing on the deceased's death.

(*d*) Annuities or other interests purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest arising or accruing by survivorship or otherwise on the death of the deceased.

Policies included in (*a*) comprise those effected by the deceased on his own life and kept up by him to his death, and also those on the life of another person owned by the deceased. Estate Duty is payable: as to policies on deceased's life on the amount received from the company, including bonuses; and as to policies on the lives of other persons on the saleable values of such policies at the date of the deceased's death (F. A. 1894, s. 2. (1) (*a*)). These amounts are included in the Inland Revenue affidavit as part of the deceased's free estate. It should be noted that a policy on the life of another person who survives the deceased cannot be treated as a reversionary interest and payment of the Estate Duty on it deferred. It must be accounted for at the deceased's death at its then value.

The situation of policy moneys for Death Duty purposes is only material when the deceased died domiciled outside Great Britain. It would seem to depend on the position of the office of the company where payment can be enforced, and therefore where the office is in Great Britain and payment can be enforced there, the policy moneys are situate

there ; but where the responsible office is out of Great Britain the moneys are foreign assets and not liable to Estate Duty where the deceased's domicile was foreign. It follows that where a deceased person domiciled abroad was insured in an English office, but the policy moneys are payable at a branch office of the company abroad, and can only be recovered by process of law there, no Estate Duty is payable. Conversely, the policy moneys of a company having its head office out of Great Britain, which are payable by a branch office in this country and recoverable here by process of law, are English assets and liable to Estate Duty whatever was the domicile of the deceased (*see* hereon New York Life Insurance Co. *v.* Public Trustee, [1924] 1 Ch. 477).

Where a deceased person domiciled abroad is insured in an English assurance company and the moneys are payable in this country, the company is not entitled to withhold payment until an *English* grant of representation has been taken out. The proper course seems to be to pay over the money to the duly constituted foreign personal representative after deducting a sufficient sum to cover any Estate or other duty (Revenue Act, 1884, s. 11, as amended by Revenue Act, 1889, s. 19 ; and Haas *v.* Atlas Insurance Co. Limited, [1913] 2 K. B. 209). It is understood, however, that in these cases, where the policy moneys are the only asset in Great Britain, and a grant of representation is not therefore required, the claim for Estate Duty is not pressed.

Policies included in (*b*) are also liable to Estate Duty on the death of the deceased (F. A. 1894, s. 2 (1) (*c*), and the incorporated sections, and F. A. 1894, s. 2 (1) (*d*)).

For example : *A*, having effected a policy on his life, assigns it by way of gift to *B* or settles it and continues to pay the premiums. On *A's* death Estate Duty is payable on the full amount of the policy moneys. Similarly,

if *A* effects a policy on his own life in favour of *B* and pays the premiums up to his death.

Where the policy was only partly kept up by the deceased, Estate Duty is only payable on the proportion of the moneys which the premiums paid by him bear to the total of the premiums paid. For instance, if *A* effects a policy on his life in favour of *B* and subsequently pays part of the premiums, on his death Estate Duty is only payable on a corresponding proportion of the policy moneys. If, however, at the time of the gift an arrangement was made by which the deceased was to pay part of the premiums, or they were provided for out of other property, Estate Duty would apparently be payable on the whole of the policy moneys as noted at (*c*) below. Where, however, *A*, being possessed of a policy on his life the premiums on which he has hitherto paid himself, or which is fully paid, assigns it by way of gift or settles it, and *B*, the donee, thenceforth pays the premiums and *A* survives the transaction for three years, no Estate Duty is payable on his death for it cannot be said that the payment of the premiums by *A* prior to the assignment was a keeping-up of the policy by *A* for the benefit of the donee, as the latter may not have been contemplated as a donee (Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145). But if, without any arrangement being made, *A* pays part of the premiums after the assignment, Estate Duty is payable on a proportion of the total amount receivable under the policy, the proportion being that which the premiums paid by *A* since the assignment bear to the total premiums since the assignment.

It should be borne in mind that where policies are assigned by way of gift to a donee they would in any case be liable to Estate Duty as gifts *inter vivos* if the donor died within three years of the gift or within three years from ceasing to pay the premiums.

The liability to Estate Duty is independent of the existence of any obligation on the part of the deceased to keep up the policy. It is sufficient if he does in fact keep it up.

Estate Duty is also payable on policies comprised in (*c*): viz., those provided wholly or partly by the deceased (F. A. 1894, s. 2 (1) (*d*)).

For example, if *A* on his marriage settles a policy (on his own life) which had been in existence for some time, the arrangement being that the subsequent premiums should be paid out of the income of the property settled by the wife, Estate Duty is payable on the whole of the assurance moneys on the death of the assured (A.-G. *v.* Hawkins, [1901] 1 K. B. 285, and A.-G. *v.* Robinson, [1901] 2 I. R. 67). The reason is that the settlement constituted a provision by the deceased by arrangement with his wife that the policy should be so kept up that on the death of the survivor of the husband and wife the whole of the beneficial interest in the policy moneys should accrue and arise to the children.

And generally, where an assured person makes a settlement of a policy on his life, it would seem that Estate Duty becomes payable on his death, whether the premiums were paid by him or by any other person who was a party to the settlement (A.-G. *v.* Dobree, [1900] 1 Q. B. 442, and *see* A.-G. *v.* Murray, [1904] 1 K. B. 165, and Lethbridge *v.* A.-G., [1907] A. C. 19). For in such cases the policy is in fact a provision by the deceased alone, or in concert or by arrangement with another person or other persons, so that a beneficial interest accrues or arises on the deceased's death (*see also* Inland Revenue *v.* Scotts Trustees (1918), 55 S. L. R. 654).

But the provision made by the deceased must be a real and substantial one, and therefore where *A* on his marriage

insures his life and the policy is settled, the arrangement being that the premiums are to be paid out of the income of a fund settled by the wife's father, no Estate Duty would be payable on the death of *A* (*see* Richardson *v.* Commissioners of Inland Revenue, [1909] 2 I. R. 597). The policy had no value at the date of the settlement and nothing was paid by *A* towards keeping it up, nor did he provide any other property; there was therefore no substantial provision by him. Succession Duty would, however, be payable in such a case, and at the higher rates applicable where Estate Duty has not been paid. The predecessors for such duty would be the deceased as to one moiety and his father-in-law as to the other moiety (*see* S. D. A. 1853, s. 13).

Where a person on his marriage assigns a policy on his life to trustees upon trust for his wife for life and then on his children and in default for himself absolutely and pays the premiums up to his death, the policy moneys are liable to Estate Duty under s. 2 (1) (*d*) of F. A. 1894, as already indicated, and are fully aggregable and may not be regarded as representing property in which the deceased "never had an interest" within the meaning of the proviso to F. A. 1894, s. 4 (A.-G. *v.* Pearson, [1924] 2 K. B. 375).

Annuities and interests provided by the deceased comprised in (*d*) are also liable to Estate Duty on his death (F. A. 1894, s. 2 (1) (*d*)). The term "interests" includes policies provided by the deceased referred to in (*b*) and (*c*). Annuities may be wholly provided by the deceased, or by him and another person or other persons in concert or by arrangement.

Thus *A*, by purchase from an insurance company or from the Government, provides an annuity of £50 payable to himself for life, and on his death to his widow for life. Estate Duty is payable on *A's* death on the

beneficial interest then accruing or arising: viz., the value of the annuity for the widow's life. If the widow's age at the deceased's death were sixty, the value for Estate Duty, calculated by reference to the tables in the S. D. A. 1853, would be £486 0s. 6d., and assuming this to be the saleable value of the annuity, Estate Duty would be payable by her on this sum; but payment might be made by four yearly instalments if desired (F. A. 1896, s. 16). So also where *A* being in partnership, retires on terms that a sum of £500 per annum is paid to him for his life and on his death £300 per annum to his wife for life, Estate Duty is payable on his death on the annuity of £300 thus provided for his wife. It is assumed in this latter example that as between *A* and the other partners the transaction was not by way of gift but for full consideration in money or money's worth. If, however, *A* being entitled to the business, gave it to his sons on terms that the said annual sums were to be paid out of the profits, the full value of the business would, as has been shown, be liable to Estate Duty as a gift with reservation, and the payment of duty on the capital value would of course cover the provision of the annuity of £300 payable out of the profits.

Estate Duty is similarly payable if an annuity, purchased by the deceased, is payable to both him and his wife equally during their joint lives, and on the death of the deceased to the survivor for life. Or the annuity may be so purchased that it commences to be paid to the widow on her husband's death; and generally, whatever the method selected for the annuity to be payable, Estate Duty is chargeable on the whole value of the benefit accruing or arising on the deceased's death.

The annuity or interest may, however, be provided jointly with another person or other persons who contribute a share of the consideration. In these cases, the claim

for Estate Duty is confined to the value of the annuity or interest attributable to the deceased's contribution.

If, however, two persons of about the same age jointly purchase a survivorship annuity, each contributing one half of the purchase money, no Estate Duty would be payable, as each annuitant is considered to have provided the benefit taken by him or her on death of the first to die (F. A. 1894, s. 3 (1)). For example: *A* and *B*, two spinster ladies, purchase a Government annuity of £100 payable to them equally during their joint lives, and on the death of one the whole to the survivor. As they contribute the purchase money in equal shares, Estate Duty is not payable on the death of the first to die, nor would Succession Duty be payable. But where there is considerable disparity between the ages of the annuitants, Estate Duty may be payable. So also where the purchase money is contributed in unequal shares: if the annuitant who dies first were the larger contributor and the annuity were enjoyed in proportion to the respective contributions, Estate Duty would be payable on the value of so much of the annuity as was attributable to the difference between the contributions. If the annuity were enjoyed equally, Estate Duty would be payable on the value of a moiety of such difference.

If an annuity is payable on the deceased's death for a limited number of years, Estate Duty is only payable on the value for that period.

It will be noticed that besides annuities, *interests* provided by the deceased are also included in (*d*), thus bringing under taxation any other arrangement by which the deceased secures a benefit to arise or accrue on his death. An instance of such an arrangement where the benefit was provided by the deceased in concert with other persons has already been given in the case of a policy settled by

the deceased so that the premiums are paid out of the income of other property comprised in the settlement.

The interest may also be a capital sum or real property for any estate or interest therein. For instance, *A*, on retirement from a partnership, arranges that an annuity of £300 per annum shall be paid by the surviving partners to him for life, and on his death an annuity or a lump sum to his wife. On his death Estate Duty would be payable on the annuity or lump sum provided by deceased for his wife (F. A. 1894, s. 2 (1) (*d*)).

From the foregoing remarks it will be seen that Estate Duty is payable on all survivorship and nomination policies effected by the deceased, including those effected under the Married Women's Property Act, 1870, and insurances effected in provident or other funds. Thus where the deceased effects a policy on the joint lives of himself and his wife so that the money is payable to the survivor, or where the policy is effected on his life for the benefit of his wife, Estate Duty is chargeable on the deceased's death on the full amount of the policy moneys. But if a wife effects a policy on her husband's life and pays the premiums out of her separate property, Estate Duty would not be payable on the husband's death; though the reverse would be the case if the premiums were paid by the husband.

Estate Duty is similarly payable in the case of provident funds which are aided by employers for the benefit of widows and children of deceased employés, no deduction being allowed in respect of the aid supplied by the employer. For, in effect, the provision is made by the deceased in concert or by arrangement.

Thus moneys or benefits derived under the Customs Funds Regulations, or under the Insurance Regulations of the Crown Agents for the Colonies, or under the various

provident or insurance funds established by corporations, assurance societies, railway or other companies for the benefit of their employés, are taxable in full on the death of the assured. For although the funds may be assisted from sources outside the deceased, yet where the assured himself actually or in effect subscribes, he must be considered to provide the benefit accruing on his death. Similarly, annuities and capital sums payable to the widows and children of dissenting ministers are liable to Estate Duty if the contribution paid by the minister entitles his widow or children to any annuity or capital sum of a fixed or varying amount ascertainable with reference to the amount of the contribution and income of the fund.

No duty is payable, however, if the annuity or capital sum is unenforceable and payable as a matter of charity, no premium being paid. The same result would follow where there is no invested fund and no regular subscriptions, or the amount paid is entirely charitable on the part of the employers and without reference to the subscriptions, if any, paid by the deceased.

Policies taken out under the Married Women's Property Acts and in Provident and Friendly Societies in favour of a named person or a fixed class, so that the beneficiaries acquire absolutely vested interests during the deceased's life are not liable to aggregation as they are regarded as constituting property in which the deceased never had an interest (F. A. 1894, s. 4), but if in default of the beneficiaries surviving the deceased there is a resulting trust in his favour, the policy moneys would be liable to full aggregation.

A total exception from Estate Duty is provided in the case of annuities of the kind indicated above, which do not exceed £25 per annum. But where there are several of such annuities to the same person, the exemption is confined to the one first granted which does not exceed

£25 (F. A. 1894, s. 15 (1)). For example: *A* purchases an annuity of £40 for *B* to commence on *A's* death, an annuity of £15 for the joint lives of himself and *B* and for the life of the survivor, and subsequently purchases an annuity of £10 for *B* on the same terms as the annuity of £40. On *A's* death in the lifetime of *B*, Estate Duty is payable on the annuity of £40 and the annuity of £10, but not on the annuity of £15 which comes within the exemption from Estate Duty. This exemption does not apply to annuities given by the will of the deceased.

Any sum paid under the Workmen's Compensation and Employer's Liability Acts by an employer as compensation for the death of a deceased employé is not liable to Estate Duty on the employé's death, as it is not considered to form part of the estate, nor can it be said to have been provided by him. The gratuities payable to the representatives of deceased Civil Servants under the Superannuation Acts, or to the representatives of a deceased school teacher, who died before the 1st April, 1926, under The School Teachers (Superannuation) Act, 1918, are also not liable to Estate Duty or to any other duty. In the case of school teachers dying on or after the 1st April, 1926, the representatives have an enforceable right to the payment, and the death duties are chargeable thereon in connection with the teacher's death (Teachers (Superannuation) Act, 1925). A similar liability attaches in the case of school teachers in Scotland (Education (Scotland) (Superannuation) Act, 1925, and scheme thereunder).

Estate Duty is not leviable in respect of policies taken out by the deceased for the benefit of a third person in foreign or Colonial insurance offices, unless they are payable in Great Britain, or unless they are vested in British trustees resident in Great Britain, nor in respect of any annuity or interest which is only payable or recoverable out of Great Britain.

Pensions or annuities payable by the Government of India to the widow or children of the deceased who was an officer of such Government, are exempt from Estate Duty notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension, donation, or annuity is paid (F. A. 1894, s. 15 (3)).

The provisions as to annuities or interests provided by the deceased do not apply where they are charged on property which itself passes on the death of the deceased, as in that case Estate Duty is leviable on the principal value of the property without deduction.

Where any arrangement referred to under this heading was effected for full consideration in money or money's worth, Estate Duty is not leviable on the deceased's death (F. A. 1894, s. 3 (1), and *see* Lethbridge *v.* A.-G., [1907] A. C. 19). This means, of course, consideration given by the person who benefits on the death of the deceased, and it has no relation to the consideration given by the deceased in purchasing the benefit for the other person.

H.—Property in which the Deceased or any Other Person had an Interest Ceasing on the Death of the Deceased to the extent to which a Benefit accrues or arises by the Cesser of such Interest.

The last heading dealt with annuities or any interests *arising* on the death of the deceased. This heading deals with interests, such as life interests and rent charges and annuities charged on property, *ceasing* on his death, whether he himself enjoyed such interest or not (F. A. 1894, s. 2 (1) (*b*)).

It has been held that Estate Duty is payable on the cesser of an annuity in every case in which the annuitant

has a right to have recourse to the property out of which the annuity is payable provided that by reason of the annuitant's death a benefit has accrued to the property (*see* A.-G. *v.* Watson, [1917] 2 K. B. 427).

The value upon which Estate Duty is payable in cases under this heading is determined as follows :—

(1) If the interest extended to the whole income of the property, Estate Duty is payable on the principal value of that property (F.A. 1894, s. 7 (7) (*a*)).

(2) If the interest extended to less than the whole income of the property, Estate Duty is payable on the principal value of an addition to the property equal to the income to which the interest extended (F. A. 1894, s. 7 (7) (*b*), and *see re* Townsend, [1901] 2 K. B. 331).

The effect of an interest ceasing is thus to cause Estate Duty to become payable (*a*) on the principal value of the property where the interest ceasing extends to the whole income, or (*b*) on a "slice" of the property sufficient to produce the interest where the latter extended to less than the whole income.

For example : *A*, by will gave an annuity of £50 to his sister *B* charged on real estate worth £120 per annum. On *B's* death, Estate Duty is payable on so much of the property charged as is required to produce £50 per annum : *e.g.*, if the property is worth £2,400 at his death, on $\frac{50}{120} \times$ £2,400 = £1,000.

Similarly where a testator by will gave an annuity primarily payable out of the income of his residuary estate and the annuitant died two days after the testator, it was held that Estate Duty became payable on her death on the proportion of the residuary estate required to produce the annuity (A.-G. *v.* Watson, [1917] 2 K. B. 427), and a similar

decision was arrived at where a fixed annual sum was directed to be paid out of the income of part of a residuary estate for the maintenance of the testator's son during minority and the son died under twenty-one (A.-G. *v.* Coole and Others, [1921] 3 K. B. 607). If no capital has been set aside in cases of this kind a notional capital for Estate Duty may be conveniently ascertained as the sum sufficient at the current average rate of interest to produce the annuity. But if a capital has been set aside it constitutes "property passing" and duty is chargeable on its value at the date of the annuitant's death. If the annuity is charged on real estate, the "slice" should be arrived at as shown in the example given above of property worth £120 per annum, and it should be borne in mind that in ascertaining the annual value of the property for this purpose deduction ought to be taken for repairs (Lord Advocate *v.* Fothringham (1923), S. L. T. 487).

Should the annuity have been given free from income tax the interest ceasing is the gross annual sum necessary after tax is deducted to produce the net annuity. Thus if an annuity of £5,000 is given free of income tax and the tax is at 4s. in the £, the gross annuity ceasing is £6,250 and Estate Duty is chargeable on the capital required to produce this sum.

Where the interest of a person ceases on a death and at the same time he becomes entitled to another interest which then commences, Estate Duty as a general rule is only chargeable in respect of the actual beneficial accretion (*re* Townsend, [1901] 2 K. B. 331). So that where, on the death of *A*, *B*, who was entitled to the income of property, becomes entitled in lieu thereof to the property itself or to the sale moneys, no Estate Duty is chargeable. But if being only entitled to a share of the income he should become entitled on the death to a larger share, Estate Duty would be payable on the capitalized value of the increase.

Where, however, an annuity is, by the will or deed creating it, expressed to be payable to two or more persons for their joint lives, with remainder, as to the whole annuity, to the survivors and survivor for lives and life, the gift is considered to be of *one* annuity only, continuing until the death of the last annuitant. On the death of any annuitant, other than the last survivor, it is only his interest in the annuity which passes, and Estate Duty is chargeable only on the actuarial value for the remaining lives or life of the proportion so passing. The duty is not a charge on the property out of which the annuity issues, but is payable by the surviving annuitants or annuitant, who is allowed to pay by instalments under s. 16 of the F. A. 1896. The liability to duty in these circumstances rests on the *passing* under s. 1 of the F. A. 1894, rather than on the *cesser* of an interest, but it is conveniently dealt with in connection with other kinds of annuities.

It should be noted that this heading deals with interests in property which does not *itself* pass on the deceased's death (*see* judgment in Inland Revenue *v.* Maclachlan (1899), 1 Fra. 917). Where the property *itself* passes, Estate Duty is payable on its principal value, without regard to the interest ceasing.

There must also exist property out of which the interest issues. For if an annuity is payable to *A* for life under a bond given by *B*, no Estate Duty is payable on the cesser, as the annuity is dependent on *B's* personal security, and there does not exist any property in respect of which a benefit can arise by the cesser of the annuity. Similarly, in the case of an annuity given by will, which is not charged on specific property, and for which no fund or capital is directed to be, or is in fact, set aside, if the estate has been fully administered, so that the annuity is being paid as a personal liability of the residuary legatee, there is no identifiable property to which the annuitant

can have recourse and consequently no property upon which Estate Duty can be charged at his death. But if the annuity was originally charged upon specific property and such property is released within three years of the annuitant's death, Estate Duty is payable (F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59).

Property of this kind, which mainly consists of annuities and rent charges charged on property which does not itself pass, is divided into (1) that in which the deceased had an interest ceasing on his death, and (2) that in which some other person had an interest ceasing on the deceased's death.

An illustration of (1) has already been given in the case of an annuity charged on real estate.

Under (2) are included estates *pur autre vie* and annuities or rent charges charged upon property for the life of one person for the benefit of another.

Property which is held on lease for one or more lives is also taxable under this heading.

It should be noted that no Estate Duty is payable in the case of the falling in of property held on lease for lives, nor in respect of the determination of any annuity where such lease or annuity was granted for full consideration in money or money's worth (F. A. 1894, s. 3 (1)). In the case of A.-G. *v.* Sandwich, [1922] 2 K. B. 500, under a family arrangement the annuity was granted in consideration of benefits conferred on the grantor by a deed disentailing certain estates in his favour. It was held that the annuity was granted for full consideration in money or money's worth and therefore Estate Duty was not payable on its cesser. Where there is a part pecuniary consideration it may apparently be deducted from the value on which Estate Duty is payable (F. A. 1894, s. 3 (2)). See also page 25 *et seq.* as to gifts *inter vivos* with reservation of an annuity.

Property in which the deceased or other person had merely an interest as holder of an office, or as recipient of the benefit of a charity, or as a corporation sole (*e.g.*, a bishop, a rector, or a vicar), is exempted from Estate Duty (F. A. 1894, s. 2 (1) (*b*)). The effect is to prevent Estate Duty being chargeable upon salaries or profits attached to any office such as that of a judge or ecclesiastical person, or upon pensions and annuities granted by charitable societies.

And where under a will or settlement an annual sum is payable to a person for his trouble in acting as trustee, Estate Duty is not leviable on the death of the trustee, as he is considered to be entitled as the holder of an office, *i.e.*, that of trustee (A.-G. *v.* Eyres and Others, [1909] 1 K. B. 723).

Apart from cases governed by the decision in A.-G. *v.* Lane Fox, [1924] 2 K. B. 498 (as to which see page 76), where any interest, such as is considered under this heading, is surrendered more than three years before death, Estate Duty would not be payable, provided *bonâ fide* possession and enjoyment was assumed and thenceforward retained to the entire exclusion of the person who had the interest, and of any benefit to him by contract or otherwise (A.-G. *v.* Beech, [1899] A. C. 53, and *see* F. A. 1900 s. 11 (1) as amended by F. A. 1910, s. 59, and Lord Advocate *v.* McTaggart Stewart (1906), 13 S. L. T. 945).

I.—Settled Property.

To some extent the property referred to under this heading has already been dealt with, but as there are numerous provisions relating only to settled property it is convenient to consider it under a separate heading.

Property is said to be settled when it stands limited to or in trust for persons by way of succession (F.A. 1894, s. 22 (1) (*h*) and (*i*) and S. L. A. 1925, s. 1). Thus if *A* by will gives property to *B* for life, then to *C* for life, and then to

D absolutely, the property is said to be settled by the will of *A*, for it passes under that instrument to *B*, *C*, and *D* in succession.

A settlement, if of personal property, may be created, (*a*) by will, (*b*) by any other instrument in writing not under seal, (*c*) by deed—that is, by instrument in writing under seal—or (*d*) verbally. But if it is made in consideration of marriage it must be in writing signed by the party to be charged or some person authorised by him (Statute of Frauds, 29 Car. II. c. 3, s. 4). And if the settlement is of land *inter vivos* it must be in writing signed by the settlor, (L. P. A. 1925, s. 53 (1)) and be constituted by a trust disposition and, unless there is a trust for sale, a vesting deed (S. L. A. 1925, s. 4 (1)).

It is not material for Estate Duty purposes, other than that of gifts *inter vivos*, whether the settlement was voluntary (*i.e.*, made without any pecuniary or valuable consideration), or whether it was made in consideration of marriage or whether made by the deceased himself or by some other person. If property passes under the settlement on a death, Estate Duty is leviable (F. A. 1894, ss. 1 and 2 (1) (*b*)).

It has already been shown that if a settlement is made by the deceased within three years of his death, Estate Duty is payable thereunder as a disposition *inter vivos*, and this is so even where the deceased did not reserve to himself any interest in the property.

At whatever period the settlement is made, however, if the deceased reserves an interest terminable with his death, Estate Duty is payable on such event. As an example: if *A* settles property on himself for life and afterwards on his children equally, Estate Duty is payable on *A's* death in respect of the principal value of the property then passing.

If a life interest were reserved, but the income never actually paid to the deceased, Estate Duty would be leviable

if the deceased were legally entitled to the life interest at his death ; but if the income were payable or not payable to the life tenant at the sole discretion of trustees, and there was an effective power to accumulate income, whether exercised or not, no Estate Duty would be leviable on the death on which the discretionary trust terminated.

Where a life interest in settled property may cease on the happening of certain events in deceased's lifetime (as, for instance, his bankruptcy), Estate Duty is leviable on the death of the deceased if the event determining his life interest has not in fact happened or has happened within three years of his death.

Where a testator by will confers upon two or more persons the right to reside in certain property or to have the use of certain chattels for their respective lives and one of such persons dies, there is no dutiable passing on that event, but on the death of the last person entitled the whole property is considered to pass and Estate Duty would then become chargeable.

Failure of Interest.

It is, however, provided with regard to settled property that where the interest of any person fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death (F. A. 1894, s. 5 (3) ; A.-G. *v.* Wood, [1897] 2 Q. B. 102 ; A.-G. *v.* Glossop, [1907] 1 K. B. 163).

This provision only applies where—

(1) The property is settled, *i.e.*, limited to persons by way of succession ; and

(2) Limitations subsequent to the deceased's interest continue to subsist.

For instance, property is settled by *X* by deed on *A* for life, on her death, on her husband *B* for life, and on his

death, on their children. If *B* died before *A*, no Estate Duty would be payable in respect of the property on his death, for his life interest never came into possession, and subsequent limitations, viz., those for the benefit of his children, continue to subsist. (*See* also example on page 68, and *re* Harrison, Johnstone *v.* Blackburn and East Lancashire Royal Infirmary, [1918] 2 Ch. 374). The property would, however, be liable to Estate Duty on the death of *A*, the wife.

Enlargement.

A corollary to this exception is provided to meet cases where the settlor's interest becomes enlarged. For where a man by deed settles property on himself for life and after his death on any other person or persons, with an ultimate reversion of an absolute interest or an absolute power of disposition to himself, the property is not to be deemed to pass to the settlor on the death of any such other person by reason only that the settlor being then in possession as tenant for life becomes in consequence of such death entitled to the immediate reversion or acquires an absolute power to dispose of the whole property (F. A. 1896, s. 14, and A.-G. *v.* Wood, [1897] 2 Q. B. 102). For this exemption to apply it is necessary—

(1) That the settlor shall be in possession as tenant for life.

(2) That he becomes absolutely entitled by the death of the person to whom interests subsequent to his life interest were given.

Thus if property is settled by *A* on himself for life and on his death on his wife for life and on her death on himself absolutely, Estate Duty is not leviable on the death of the wife in the settlor's lifetime, for he being then in possession of the property as life tenant has become in consequence of such death absolute owner again.

Reverter to Settlor.

Conversely, where by a disposition of property, a life interest or life interests determinable on death are conferred on another person or other persons jointly or severally or in succession, and such person or persons enter into possession of such interests and thenceforth retain possession to the entire exclusion of the settlor or of any benefit to him by contract or otherwise, and the only benefit retained by him is subject to such interest or interests and no other interest is created by the settlement, then on the death of any such life tenant no Estate Duty is payable in respect of the property by reason only of its reverter to the disponer or settlor in his lifetime (F. A. 1896, s. 15, sub-sections 1, 2 and 3, and A.-G. *v.* Penrhyn and Another (1900), 83 L. T. 103). It is, however, specially provided that if the person taking such life or determinable interest had at any time prior to the disposition been competent to dispose, the above exemption is not to apply.

An example of such a reverter to the settlor occurs where *A* settles property on *B* for life and on his death on *C* for life, and on the death of the survivor on himself absolutely. Here, provided *B*, and on his death *C*, enter into possession of their respective life interests and retain such possession to the entire exclusion of *A* so that he receives no benefit of any kind, Estate Duty is not payable in respect of the property on the death of the survivor of *B* and *C* in *A's* lifetime, as the property reverts to *A* on such death. But if any other interests had been created by the settlement, or if *B* or *C* had at any time prior to the disposition been competent to dispose of the property, this exemption from duty would not apply. For suppose at one time *B* had owned the property and, in order to evade duty on his death, had given it to *A* who had settled it as above ; or suppose the settlement had contained an absolute gift to the children of *B* and *C*, and

in default of such children the property was to revert to *A* the settlor absolutely ; in neither case would the exemption apply. In the first case because it could not be said that *B* had not at any time prior to the disposition been competent to dispose, and in the second case because other interests, *i.e.*, those of the possible children of *B* and *C*, had been created (A.-G. *v.* Penrhyn and Another (1900), 83 L. T. 103, and *see* A.-G. *v.* Glossop, [1907] 1 K. B. 163).

A common instance of the operation of this exemption occurs when a landed proprietor gives the use of a cottage to an old servant for life, so that on his death the house is to revert to the settlor. If the servant dies in the settlor's lifetime, Estate Duty would not be payable on the house, though, strictly speaking, it constituted property passing on such event.

Where as in the above example the determinable interest is conferred on more than one person, it cannot be claimed on the death of the first that the exemption applies, and it is thought that Estate Duty should then be paid but should be reclaimed on the death, when the actual reverter to the settlor takes place (*cf.* A.-G. *v.* Walker, *Times*, 14th May, 1896, noted page 175).

Another exempting, or rather postponing, provision deals with property settled by a husband or wife on the other by a disposition taking effect before the F. A. 1894. For where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of the F. A. 1894, and on his or her death, the survivor becomes entitled to the income of the property settled by such survivor, Estate Duty is not to be payable in respect of such property until the death of the survivor (F. A. 1894, s. 21 (5), and A. G. *v.* Strange, [1898] 2 Q. B. 39).

Thus *A*, by deed dated 1860, settles property on his wife for life, and on her death on himself for life and then on their children. The wife dies in 1895, leaving her husband, the settlor, surviving : Estate Duty is not payable on her death, although it will be payable on the subsequent death of *A*. This provision involves three conditions :—

(1) That the settlement shall have taken effect prior to the coming into operation of the F. A. 1894 ; and

(2) That the settlor shall be the surviving life tenant ; and

(3) That the income and not the *corpus* of the property shall pass to the settlor.

Exemption on Subsequent Passings.

The above provisions in relief of settled property relate mainly to the Estate Duty which otherwise would have been payable on its first passing.

It now remains to consider the incidence of duty when the property again passes under the settlement and the effect of payment of duty in the estate of a deceased reversioner. As there have been considerable changes in this respect the subject will be considered with reference to the date of death of the life tenant.

Death between 1st August, 1894, and 30th April, 1909.

A. Where Probate Duty was Paid.

First, a brief explanation of some of the duties under the law in force prior to the F. A. 1894 is necessary. An *ad valorem* duty was payable in respect of the deceased's free personal estate which was called Probate Duty where the deceased left a will, and Administration Stamp Duty where he died intestate. For convenience it is generally referred to as Probate Duty. Probate Duty was not payable in respect of real estate.

Supplementing Probate Duty another duty, called Account Duty, was in certain cases imposed on personal estate under dispositions *inter vivos*. It was payable in respect of personal property which had been dealt with by the deceased in his lifetime, comprising, roughly speaking, the property considered under headings "E" and "F." This duty, like Probate Duty, was not payable on real estate.

It was provided that Estate Duty should not be payable on the death of a deceased person in respect of property settled by a will or disposition made by a person dying before the passing of the F. A. 1894, in respect of which property Probate Duty or Account Duty had been paid or was payable, unless the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property (F. A. 1894, s. 21 (1), and *see* A.-G. *v.* Dodington, [1897] 2 Q. B. 373). The exemption only applied to property passing under dispositions taking effect before the F. A. 1894, where the settlor had died before that date, and then only when the deceased life tenant was not competent to dispose. Moreover, it was essential that Probate Duty or Account Duty should have been paid or be payable in respect of the property passing. Real estate passing under the will of a person dying before that date was not exempted, as it was not liable to Probate Duty or Account Duty. (As to the incidence of Estate Duty on a mixed fund consisting partly of personal estate and partly, of the proceeds of real estate derived under the will of a testator who died before the F. A. 1894, *see* Berry *v.* Gaukroger, [1903] 2 Ch. 116). In connection with compound settlements it should be noted that the property exempted from Estate Duty was limited to property settled at the date when the liability to Probate Duty arose, and must

have been property in the settlement of which the will or disposition of the person, on whose estate the Probate Duty was paid or payable, formed an integral part (*re* Torrington, [1913] 2 Ch. 623).

The payment of Probate Duty in the estate of a person entitled in reversion who had predeceased the life tenant was considered also to bring his share of the settled funds within the above exemption from Estate Duty on the death of the life tenant (*see* A.-G. *v.* Dodington, [1897] 2 Q. B. 373).

It may be observed that Probate Duty was payable under the will or intestacy of every person through whom it was necessary to make title to establish the devolution of the property (A.-G. *v.* Partington, L. R. 4 H. L. 100), and that where shares of property fall into the estates of persons who died before the F. A. 1894, the old duties are still payable except that the payment of Estate Duty covers any Legacy Duty at £1 per cent., or Succession Duty at £1 or £1 10s. per cent. which would otherwise have been payable under subsidiary devolutions. In these cases, where a grant of representation was originally taken out, the omitted asset should be accounted for at its value at the date of the Inland Revenue affidavit leading to such grant (Customs & Inland Revenue Act, 1881, s. 32). The value may be arrived at by discounting the property for the period which has elapsed from them up to the date when the property fell into possession. Interest on the duty is charged from the earlier date.

An example, which may still occur, of the operation of this exempting provision is as follows :—

> *A*, who died in 1876, by will gave his wife *B* an annuity of £500, which he charged rateably on both his real and personal property. On the death of *B* in 1908, Estate Duty became payable only on the proportion of the annuity

fund attributable in a due course of administration to his real estate. In so far as the annuity was derived from the personal estate which bore Probate Duty on *A's* death, it was exempt from Estate Duty. Thus if *A's* personal estate were £20,000 and his real estate £12,000, and the annuity fund or the capital necessary to produce £500 per annum—say, at £4 per cent.—were £12,500, the proportion of this sum derived from real estate would be $\frac{12000}{32000}$ or three-eighths. Estate Duty was therefore payable on three-eighths of £12,500 (F. A. 1894, s. 7 (7) (*b*); *see also* Berry *v.* Gaukroger, [1903] 2 Ch. 116, where the property passing consisted of a mixed fund made up partly of personal estate and partly of the proceeds of real estate). The remainder of that sum constituted settled property which had borne Probate Duty and was therefore exempt from Estate Duty (F. A. 1894, s. 21 (1)).

This example is not affected by the Finance Acts of 1910 or 1914 (*see* F. A. 1910, s. 55, and F. A. 1914, s. 14, proviso (*a*)).

Real estate given upon trust to sell becomes impressed with the character of personal estate as from the time when the trust comes into operation. So that if an estate of a dead reversioner becomes entitled to a share of such property, it is liable to duty under his will or intestacy as personal estate, even though it has not actually been sold.

B. Where Estate Duty Paid.

The above remarks deal with the exemption from Estate Duty of settled property which had borne Probate Duty. The analogous but more important exemption

from a second Estate Duty where that duty had once been paid remains to be considered. This exemption provided that if Estate Duty had already been paid in respect of any settled property since the settlement took effect, it should not be again payable in respect thereof until the death of a person who was at his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and who, if on his death subsequent limitations under the settlement took effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time whilst so competent to dispose of the property (F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13). Further, neither Legacy Duty nor Succession Duty at £1 per cent. was payable (*ibid.*).

For instance, *A*, who died in 1898, by will settled property on his wife *B* for life, then on his daughter *C* for life, then on her husband *D* for life, and, subject thereto, on the children of *C* and *D*. Estate Duty was payable on the property on *A's* death as forming part of his free estate, but under the above provision it was not again payable on the death of *B*, *C*, or *D*. Moreover, as all the beneficiaries stood in the relation of lineal issue to *A*, the property was exempted from Legacy Duty or Succession Duty at £1 per cent.

If, however, either *B*, *C*, or *D* had been competent to dispose of the property (as, if the testator had given any one of them a *general* power of appointment and such person had been *sui juris* or not under any legal disability), the exemption would not have applied and Estate Duty would have been again payable on the death of such person, even though he or she did not exercise the power of disposition (F. A. 1894, s. 2 (1) (*a*), and A.-G. *v.* Hay and Others, [1899] 2 Q. B. 245).

The general effect of the provision was that where property was settled, one payment of Estate Duty was sufficient and covered subsequent passings on the deaths of limited owners, and that Estate Duty was not again payable until the death of a beneficiary who was competent to dispose. As will be explained later, this immunity was balanced by the charge of a further Estate Duty, called Settlement Estate Duty, at £2 per cent. (originally £1 per cent.), which was payable where the settlement took effect after the F. A., 1894, except where the only life interest was that of the husband or wife of deceased.

The exemption was considered also to apply where the reversioner had predeceased the life tenant and Estate Duty was payable in his estate (*see in re* Studdert; Commissioners of Inland Revenue *v.* Priestley, [1901] A. C. 208, and Lord Advocate *v.* Mackenzie's Trustees (1905), 42 S. L. R. 584).

Where the tenant for life under a settlement became entitled under the will or intestacy of a beneficiary who had predeceased him to such beneficiary's share of the settled property, Estate Duty was and is payable thereon as part of the life tenant's estate, and such duty in that case is not also payable on that share under the settlement, as Estate Duty is not chargeable twice on the same passing (F. A. 1894, s. 7 (10)).

Death between 30th April, 1909, and 15th August, 1914.

The effect of the F. A. 1910 was to do away with the exemption from Estate Duty of any share of the settled property by reason of the liability of such share to Probate Duty or Estate Duty in the estate of a dead reversioner, not being the settlor (F. A. 1910, s. 55).

Exemption still continued in respect of settled property or a share therein which reverted to the estate of the settlor and was liable to Probate Duty or Estate Duty therein (*in re* Studdert; Commissioners of Inland Revenue *v.* Priestley,

(*supra*) and A.-G. *v.* Dodington, [1897] 2 Q. B. 373. These decisions were not affected by s. 55 above, as in each case the reversioner was the settlor).

Settled property or any share therein to which the estate of the deceased himself became entitled on his own death was and still is a proper deduction in the Estate Duty account on the ground that Estate Duty is not chargeable twice in connection with the same death (F. A. 1894, s. 7 (10)). An instance of this would occur where the life tenant became entitled under the will or intestacy of a reversioner who had predeceased him or where the life tenant had purchased the expectant share of any of the beneficiaries entitled on his death. In any of these cases the share should be accounted for as part of the life tenant's free estate and deducted in the Estate Duty account under the settlement.

Death after 15th August, 1914.

The effect of the F. A. 1914 was to abolish the exemption from Estate Duty where Probate Duty had been paid and also to abolish the exemption from Estate Duty on subsequent deaths of limited owners where that duty had been once paid (F. A. 1914, s. 14); and where Settlement Estate Duty had been paid to provide for an allowance of that duty and interest thereon from the 15th August, 1914 (F. A. 1914, s. 14, proviso (*b*)).

An important exception was, however, made in favour of married persons, or rather in favour of those who take on their deaths. Thus it was provided that the relief from Estate Duty given to settled property was not to be affected where Probate Duty or Estate Duty had been paid on the death of one of the parties to a marriage so far as respects the payment of Estate Duty on the death of the other party to the marriage (F. A. 1914, s. 14, proviso (*a*)).

The result is that, subject to the above exception, settled property is liable to Estate Duty on each passing, notwithstanding the payment of Probate Duty or Estate Duty on an earlier death. Thus *A*, who died in 1870, by will settled personal estate on his daughter *B* for life, then on his son *C* for life, and then on the children of his said son equally. Although the property bore Probate Duty on *A's* death it will be liable to Estate Duty on the death of *B* and again on the death of *C*, assuming they both die after the 15th August, 1914, and *C* survives *B*.

Again, suppose *A* had died after the F. A. 1894, Estate Duty would have been payable in respect of his estate, but will be again payable on the deaths of both *B* and *C*.

Or *A* may have settled property by deed on himself for life and then on the trusts above. If his death took place after the F. A. 1894, Estate Duty would have been payable, but notwithstanding this payment, Estate Duty will be again payable on the deaths of *B* and *C*.

Where, however, the interest of a life tenant fails, as already explained, Estate Duty does not become payable (F. A. 1894, s. 5 (3)). For example, *A* by will gave a legacy to *B* for life, who died before the expiration of the executorial year and before the legacy had been appropriated, so that neither he nor his representatives derived any benefit in respect of his life interest. It was held that *B's* interest failed before it became an interest in possession and therefore the legacy did not pass on his death and was not liable to Estate Duty on that event (*re* Harrison, Johnstone *v.* Blackburn and East Lancashire Royal Infirmary, [1918] 2 Ch. 374).

No provision was made to prevent s. 14 F. A. 1914 operating in respect of free estates not exceeding £1,000, although such estates were not liable to Settlement Estate Duty, and therefore, where such an estate is settled, a

further Estate Duty will become payable on the death of each life tenant unless the exception relating to parties to a marriage applies.

This important exception ensures that provided, before or after the passing of the F. A. 1914, Probate Duty or Account Duty has been paid or is payable, or Estate Duty has been paid, under the settlement in connection with the death of one party to a marriage, the settled property escapes Estate Duty on the death after the 15th August, 1914, of the other party to the marriage (F. A. 1914, s. 14, proviso (*a*)), unless such other party was competent to dispose. For example, *A*, who died in 1880, by will settled his residuary personal estate on his wife *B* for life, then on his daughter *C* for life, and on her death on her husband *D* for life, and on his death on their children. *B* dies after the 15th August, 1914, but no Estate Duty is payable on her death as she was one of the parties to a marriage, and there had been a payment of Probate Duty on the death of *A* the other party to the marriage. If *C* then dies there is no exemption from Estate Duty on her death, but on the death of *D* the exemption comes again into operation, for there has been a payment of Estate Duty in connection with the death of *C*, one of the parties to a marriage, and therefore on the death of *D*, the other party, Estate Duty is not payable.

If the settlement in the above instance had been by *A's* father on *A* for life and then on his wife *B* for life, there would be no exemption from Estate Duty on the death of *A* after the 15th August, 1914, because although he was a party to a marriage the payment of Probate Duty was not made in connection with the death of the other party to the marriage. But on the death of *B* after *A*, the payment of Estate Duty on *A's* death would bring the property passing on *B's* death within the exemption.

Again, *A*, who dies after the F. A. 1894, by will settles property on his son *B* for life, and then on *B's* wife *C* for life, and then on their children. *B* dies after the 15th August, 1914, and Estate Duty is payable notwithstanding the payment of Estate Duty made in connection with the death of *A*. But on *C's* death after *B* the exemption operates, and no further Estate Duty under the will of *A* is payable.

In the case of a person dying intestate on or after 1st January, 1926, it is evident that the subsequent death of the surviving spouse who takes a life interest under the rules established by the A. E. A. 1925 will not give rise to a claim for a further Estate Duty.

The fact that the parties to the marriage indicated by the proviso are afterwards divorced is immaterial so far as the relief from a second Estate Duty is concerned.

It will be observed that the proviso refers to an actual payment of Probate Duty or Account Duty, whether before or after the Act, and to a liability to pay any such duty, while in the case of Estate Duty an actual payment before or after the passing of the Act is required. A payment (or liability) in respect of a reversionary interest is sufficient it the spouse entitled to the reversion was the settlor. For instance, *A*, who died in 1870, settled by deed a fund on his wife *B* for life, with remainder, in default of children, to himself absolutely. *B* died in 1915 without issue. No Estate Duty was payable on her death, because of the Probate Duty payable on the fund in *A's* estate. A similar result would follow if *A* had died after the F. A. 1894, when the Estate Duty in his estate had been paid. Moreover, as regards Estate Duty which would not have been chargeable but for the F. A. 1914, the effect of the proviso (*a*) is to restore as between spouses the position existing up to the 30th April, 1909. In other words, it preserves

s. 5 (2) and 21 (1) of the F. A. 1894 in their original form, and s. 55 of the F. A. 1910 has no application. For example, *A*, who died in 1900, gave by will £5,000 to trustees for his daughter *B* for life, then for her husband *C* for life, with remainder as *B* should appoint. Estate Duty was paid on *A's* death. On *B's* death in 1913, Estate Duty was not payable in respect of the fund passing to *C*, because of the payment on *A's* death, but was paid in *B's* estate on her reversion. On *C's* death in 1920, no Estate Duty was chargeable, not because of the payment on *A's* death, but because of the payment in *B's* estate, although *B* was not the settlor. A corresponding liability to Probate Duty would be equally efficacious. The limitation of this mode of exemption, to cases where the claim for Estate Duty would not have arisen *primâ facie*, but for the F. A. 1914, should be particularly noted.

Where the exemption from a second Estate Duty still applies, it may be taken to extend to any accumulations of the income of the settled property directed to be made by the trusts of the settlement, unless, of course, the deceased was at his death or had been at any time competent to dispose of such accumulations.

As explained on page 75, *infra*, where a tenant for life of settled property surrenders his interest in settled property, and dies within three years, Estate Duty is payable. Prior to the F. A. 1914, this would not have been the case where Estate Duty or Probate Duty had been paid under the settlement on a previous death. Some relief was, however, given by proviso (*c*) of s. 14 of the F. A. 1914, as regards surrenders, etc., made between the 15th August, 1914 and the 1st April, 1915 (F. A. 1914, s. 14, proviso (*c*)). In these cases, if the life tenant dies within three years no Estate Duty is to be payable which would not have been payable but for s. 14.

In connection with the liability of settled property to Estate Duty on each passing, the provisions for discount in respect of land or a business or any interest therein where a further death occurs within five years should be borne in mind (*see* page 117.).

The relief from Estate Duty originally conferred on settled property where Estate Duty had once been paid was counterbalanced by a further Estate Duty called Settlement Estate Duty, which was chargeable on all property settled by dispositions taking effect after the F. A. 1894, except where the only life interest was that of the husband or wife of the deceased (F. A. 1894, s. 5 (1)). The duty was originally charged at the fixed rate of £1 per cent., but was increased by the F. A. 1910, to £2 per cent. (F. A. 1910, s. 54). As the effect of the F. A. 1914 was to impose Estate Duty on each passing of settled property, Settlement Estate Duty was abolished as to deaths after the 11th May, 1914 (F. A. 1914, s. 14). It will be observed that the increased liability to Estate Duty applied in the case of deaths after the 15th August, 1914, and if therefore settled property passed on a death between those dates and bore Estate Duty, and the life tenant also died before the 15th August, 1914, Settlement Estate Duty would not be chargeable, nor would Estate Duty on the death of the life tenant.

As regards existing settlements under which Settlement Estate Duty has been paid, that duty and interest thereon from the 15th August, 1914, is to be allowed on the first occasion on which Estate Duty becomes payable in consequence of s. 14 of the F. A. 1914 (*see* proviso (*b*)).

For example, *A*, who died in 1898, by will settled property on his daughter *B* for life, and then on her children. Settlement Estate Duty at £1 per cent. was paid on *A's* death. *B* dies after the 15th August, 1914, and Estate Duty is again payable, but against it the Settlement Estate Duty is allowed

as a deduction. If the Settlement Estate Duty is greater than the Estate Duty the excess is to be repaid to the estate. This would occur where the value for Estate Duty does not exceed £500, and Settlement Estate Duty had been paid at £2 per cent. and also where a small settled fund or property has considerably declined in value.

It should be noted that the Settlement Estate Duty is only allowable against Estate Duty which is payable in consequence of the F. A. 1914. If Estate Duty would have been payable in any case, even if that Act had not been passed, no allowance can be claimed nor could it be allowed if the property is taken out of settlement and divided up so that it does not again pass under the settlement. (*See* Lord Advocate *v.* Moray (Earl), [1919] 2 S. L. T. 258.) For example, suppose *A*, who died in 1900, by will settled property on his sister *B* for life, and then on his wife *C* for life, and on her death as she should by will appoint. *B* died before the F. A. 1914, and *C* died after that date. On *C's* death Estate Duty would be again payable because she was competent to dispose, and this duty would have been payable even if the F. A. 1914 had not been passed. No allowance can therefore be made in respect of the Settlement Estate Duty paid on *A's* death. Even if *C* had had no power of appointment, no allowance of the Settlement Estate Duty would fall to be made as, being one of the parties to a marriage and Estate Duty having been paid on the death of *A*, the other party to the marriage, Estate Duty would not be payable on her death.

The allowance of interest on Settlement Estate Duty from the 15th August, 1914, is a separate matter. It is not allowed against the Estate Duty but is to be paid to the persons who would have been entitled to the income if the Settlement Estate Duty had been added to the trust fund on the 15th August, 1914, and it is to be divided

amongst those persons or their representatives according to the several interests they would have had in the income (F. A. 1914, s. 14, proviso (*b*)). In general the interest belongs to the estate of the deceased life tenant and should be accounted for in the Inland Revenue affidavit of such estate. The period during which interest is to be allowed is from the 15th August, 1914, up to the date when the claim for Estate Duty under s. 14 of the F. A. 1914 arises, *i.e.*, the date of death of the life tenant. If the widow of the settlor had a first life interest and she dies after the 15th August, 1914, and the next life tenant then dies, the interest allowable on the Settlement Estate Duty on the second death will have to be rateably apportioned between both the life tenants' estates.

As already shewn, since the F. A. 1910, no allowance can be claimed in respect of the shares of deceased beneficiaries on whose estates Probate Duty or Estate Duty is payable (F. A. 1910, s. 55), but if any share accrues to the estate of the deceased life tenant, an allowance should be made, as Estate Duty is not payable twice in connection with the same death (F. A. 1894, s. 7 (10)).

Dower and Curtesy Estates.

Where a married woman dies possessed of real property after the F. A. 1894, intestate, leaving a husband who became entitled to an estate by the curtesy, viz., an estate for his life, it is provided that such real estate is to be regarded as property settled by the will of such married woman (F. A. 1894, s. 22 (3)), so that Estate Duty, having been paid on the property as forming part of her free estate, is not again payable on the subsequent death of her husband, the tenant for life. The result is similar where a man died possessed of real property, to one-third of which his widow became entitled for life by way of dower. And in practice,

real property belonging to a married woman or husband who has died intestate *before* the F. A. 1894, was regarded as settled property for aggregation and other purposes.

In view of proviso (*a*) to s. 14 of the F. A. 1914, the incidence of Estate Duty on these estates is not affected by that Act, but it should be noted that as regards persons dying on or after 1st January, 1926, they are abolished (A. E. A. 1925, s. 45).

Release of Life Interest.

As already mentioned on page 71, where the deceased or any other person has an interest limited to cease on the death of the deceased, and such interest is surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of the person entitled in reversion, the property is nevertheless still liable to Estate Duty on the deceased's death unless the release was made three years before his death and unless the beneficial interest therein was assumed and retained to the entire exclusion of the deceased or of any benefit to him (F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) and (3)). The effect of the expression "whether for value or not" is not quite clear. It was probably introduced to prevent any escape of duty in cases where the life tenant being of considerable age or in failing health, releases his life interest to the person entitled on his death in consideration of a comparatively small payment or monetary benefit. Presumably, it would not involve the payment of duty where a settlement was broken up and the property distributed under a *bonâ fide* arrangement between the parties in proportion to the full monetary values of their respective interests, and, therefore, in determining whether a transaction involving the direct or indirect giving up a life interest in settled property is genuinely for full consideration in money or not, all the

circumstances at the time should be taken into consideration. Thus, where the life tenant and reversioner joined to sell settled property or a settled fund is divided up and the life tenant in either case receives a sum fairly attributable to the value of his life interest, no claim for Estate Duty would arise on his death whenever it took place. But if in cases of this kind the substance of the transaction is that the reversioner obtains the property on payment of a comparatively small sum representing the value of the interest of a moribund life tenant, Estate Duty would be payable on the death of the latter within three years.

It has however been decided that where *A* was in possession of real estate subject to an annuity, and the annuitant released the annuity within three years of her death, Estate Duty was not payable, on the ground that *A* being in possession was not a person entitled "in remainder or reversion" within the meaning of sub-section 1 of s. 11 F. A. 1900 (A.-G. *v.* Lane Fox, [1924] 2 K. B. 498). This decision applies where the annuity or limited interest is released from real or leasehold property which is actually in possession in fee simple or for life or lesser interest. It does not apply where the annuity is payable out of the income of pure personal estate or where a fund has been set apart to secure it, as in these cases the interest of the person benefiting by the release is, as regards such personal estate or fund, an interest "in remainder or reversion" within the meaning of the sub-section.

If a life interest is surrendered more than three years before death, Estate Duty will still be payable if *bonâ fide* possession and enjoyment of the property were not immediately assumed and thenceforward retained to the entire exclusion of the person who has the limited interest and of any benefit to him by contract or otherwise (Lord Advocate *v.* McTaggart Stewart (1906), 13 S. L. T. 945). If,

however, the benefit retained were not enforceable, Estate Duty would not be payable (A.-G. *v.* Seccombe, [1911] 2 K. B. 688).

Where a life tenant assigns his interest, whether for value or not, to some person other than the reversioner, the property is still regarded as passing on his death and is therefore liable to duty, but it would not so pass if both life tenant and reversioner assigned their interests to one and the same person.

If the reversioner assigns his interest to the life tenant and the latter dies within three years, the property would not be deemed to pass under the settlement but would, of course, be liable to duty as part of the life tenant's free estate so far as not disposed of in his lifetime. If, however, the reversioner died within three years of the assignment, Estate Duty would be payable in connection with *his* death as on a gift within three years, unless the assignment was made for full consideration in money or money's worth.

The provision as to surrender of an interest in settled property within three years did not originally affect settled property on which Estate Duty had been paid on an earlier death or which had borne Probate Duty, because, prior to the F. A. 1914, the death of the life tenant would not have given rise to a further claim for Estate Duty. Since the passing of that Act, however, Estate Duty became payable on each passing, and if any life tenant surrenders his interest within three years of his death, the property will not escape duty unless (*a*) the surrender were made between the 15th August, 1914, and the 1st April, 1915 ; or (*b*) the exemption given to the parties to a marriage by proviso (*a*) of s. 14 of the F. A. 1914, can be claimed.

Crown Entails.

It is especially provided with regard to any land or chattels settled, whether by Act of Parliament or Royal

Grant, so that no one of the persons successively in possession is capable of alienating the same (whether his interest is a tenancy for life or in tail), that the provisions of the Finance Acts as to settled property are not to apply, and the property passing on the death of any person in possession of the land and chattels is to be the interest of the successor therein, and such interest is to be valued for Estate Duty purposes in like manner as for the purpose of Succession Duty : viz., on the value of the annual income of the property for the life of the successor (F. A. 1894, s. 5 (5) ; and see *re* Bolton's Settled Estates, [1904] 2 Ch. 289). Estate Duty is therefore payable on each devolution. Under s. 44, F. A. 1922, the duty may now, at the option of the person accountable, be treated as a charge on and be raised and paid out of the corpus of the settled land or chattels in any case in which the duty is unpaid at the date of the passing of the last mentioned Act.

These provisions apply to Crown entails—that is, estates provided by Parliament in consideration of public services and settled so that they cannot be alienated. Of such a character are the estates attached to the Earldom of Nelson and the Dukedom of Wellington. The property passing, viz., the interest of the Successor, is now to be regarded an "Estate by itself" and not aggregable with any other property. *See* pages 88 and 89, and *re* Abergavenny; Nevill *v.* Inland Revenue Commissioners, [1924] A. C. 385.

Annuities and pensions granted by the State in perpetuity in respect of notable services to the State are not liable to Estate Duty, if directed in the original grant to be "clear of all taxes and deductions whatever." Where such an annuity has been redeemed by the State by payment of a capital sum, Estate Duty is payable on each death on the value of the investments representing such sum, which cannot be regarded as coming within the description of

"chattels" as used in s. 5 (5) F. A. 1894 (*re* Exmouth's Annuity, [1925] 1 Ch. 280). It was also decided in that case that aggregation is not excluded on the death of a tenant for life.

Notable Works of Art, etc.

There is also a special provision with regard to pictures, prints, books, manuscripts, works of art, scientific collections, or things not yielding income which possess a national or other public interest. For where it appears to the Treasury that any such articles are of national, scientific, historic, or artistic interest, whether settled or not, such property shall not on the death of the deceased be aggregated with other property, but shall form an estate by itself and, while enjoyed in kind, be exempt from Estate Duty (F. A. 1896, s. 20, as amended by F. A. 1910, s. 63, and F. A. 1921, s. 44). But if and when they are sold, Estate Duty becomes payable unless the sale is made after the passing of the last mentioned Act and is to the National Gallery, British Museum, or other similar national institution, any university, any county council, any municipal corporation, in Great Britain, or the National Art Collections Fund (F. A. 1921, s. 44). The Treasury is to decide, on application being made *via* the Estate Duty Office, whether any articles come within this provision, *and the exemption applies only so long as the articles are enjoyed in specie and not sold.* The moment the exemption ceases to be applicable, unless the sale is to one of the bodies mentioned above, the person selling the same, or for whose benefit they are sold, is accountable for Estate Duty, and is to deliver an account within one month after the sale. (*See* also page 92.)

CHAPTER II.

THE RATES AND AMOUNT OF ESTATE DUTY.

THERE are two species of Estate Duty: viz.—(1) *ad valorem* duty, and (2) the fixed duties. The more important is the former, which derives its name from the fact that it is ascertained from, and payable upon, the net *value* of the property passing on any death. Formerly, Probate Duty, which is in many respects an equivalent of the present Estate Duty, was paid at a fixed rate of £3 per cent. on personal estates of over £1,000, so that a person who died leaving a few thousands had to pay at the same *rate* as a millionaire. Estate Duty, however, is payable on a scale of duty graduated from £1 per cent. on estates not exceeding £500 up to £40 per cent. on estates of over £2,000,000.

The highest rate of duty is £40 per cent. Where the principal value of the estate, whether consisting only of real property or of personal property or of both, does not exceed £100, no Estate Duty at all is payable.

For the rates of duty respectively payable on deaths before the 19th April, 1907, 30th April, 1909, 16th August, 1914, 31st July, 1919, and 30th June, 1925, *see* pages 437, 450, 458, 463 and 468.

AD VALOREM DUTY.—The scale of *Ad valorem* Duty applicable in the case of deaths on or after 30th June, 1925 (F. A. 1925, s. 22) is given below, as are also the maximum values up to which the margin relief under F. A. 1914, s. 13 (1) applies.

Principal Value of the Estate.				Rate per cent. of Duty.	Margin.		
	£		£		£	s.	d.
Exceeding	100	and not exceeding	500	1	101	0	3
„	500	„ „	1,000	2	505	2	1
„	1,000	„ „	5,000	3	1,010	6	3
„	5,000	„ „	10,000	4	5,052	1	8
„	10,000	„ „	12,500	5	10,105	5	4
„	12,500	„ „	15,000	6	12,632	19	7
„	15,000	„ „	18,000	7	15,161	5	10
„	18,000	„ „	21,000	8	18,195	13	1
„	21,000	„ „	25,000	9	21,230	15	5
„	25,000	„ „	30,000	10	25,277	15	7
„	30,000	„ „	35,000	11	30,337	1	7
„	35,000	„ „	40,000	12	35,397	14	7
„	40,000	„ „	45,000	13	40,459	15	5
„	45,000	„ „	50,000	14	45,523	5	2
„	50,000	„ „	55,000	15	50,588	4	9
„	55,000	„ „	65,000	16	55,654	15	3
„	65,000	„ „	75,000	17	65,783	2	8
„	75,000	„ „	85,000	18	75,914	12	9
„	85,000	„ „	100,000	19	86,049	7	8
„	100,000	„ „	120,000	20	101,250	0	0
„	120,000	„ „	140,000	21	121,518	19	9
„	140,000	„ „	170,000	22	141,794	17	6
„	170,000	„ „	200,000	23	172,207	15	11
„	200,000	„ „	250,000	24	202,631	11	7
„	250,000	„ „	325,000	25	253,333	6	8
„	325,000	„ „	400,000	26	329,391	17	11
„	400,000	„ „	500,000	27	405,479	9	1
„	500,000	„ „	750,000	28	506,944	8	11
„	750,000	„ „	1,000,000	29	760,533	7	8
„	1,000,000	„ „	1,250,000	30	1,014,285	14	4
„	1,250,000	„ „	1,500,000	32	1,286,764	14	2
„	1,500,000	„ „	2,000,000	35	1,569,230	15	5
„	2,000,000	- - - - -		40	2,166,666	13	4

Relief where Margin just Exceeded.—Provision was made by the F. A. 1914, to meet cases of hardship where an estate just reaches above the next step in the scale and the maximum figures up to which this relief applies are given in the final column of the above table. In such

cases the amount payable is to be the highest amount of duty payable at the next lower rate plus the amount which brings the estate over the next step in the scale (F. A. 1914, s. 13 (1)). The additional *duty* is not in fact to exceed the additional *value* which has attracted the higher rate of duty. Thus :—

	£	s.	d.
Net Estate	5,050	0	0
Duty thereon at 4 per cent.	202	0	0
Under the relieving provision, however, the highest amount of duty calculated at the next lower rate—viz. 3 per cent.—would be	150	0	0
But to this must be added the amount which brings the estate over the 3 per cent. margin : viz.— ..	50	0	0
	£200	0	0

The latter amount, being less than the full duty at 4 per cent., is the correct sum payable.

It is conceived that the term "estate" used in the sub-section means the sum total of all aggregable properties passing on a death, so that if in the above instance there were other aggregable properties value £4,300 and £9,500 the unit for aggregation would be £18,850, and the rate of duty on each property 8 per cent. No claim for relief under the sub-section would in these circumstances arise. (As to aggregation *see* page 86 *et seq.*). Where an aggregated estate comprising several units just exceeds a step in the scale, the abatement in the total duty will have to be rateably apportioned between the various units. Timber, as it is not aggregable and is not liable to duty until sold, should not be taken into account as part of the "estate" contemplated by this sub-section, but if by reason of a sale it

becomes liable to duty, the rate appropriate to the estate without regard to s. 13 (1) is chargeable on the timber.

Any benefit which the deceased's free estate, if it just exceeds £1,000, may be entitled to under this provision is in addition to the limitation of Legacy and Succession Duty provided for by sub-section 2 of the same section. Where, therefore, the net value does not exceed £1,010. 6s. 3d., and the beneficiaries are strangers in blood, the total relief from Estate Duty and Legacy and Succession Duty will be substantial. The odd sum not exceeding £10. 6s. 3d., will be taken into account in fixing the amount of Estate Duty and will also be the sum payable for Legacy and Succession Duty (*see* pages 283 and 380).

Fixed Duties.—The fixed duties are 30s. and 50s., and may be paid in the following circumstances: viz., where the *gross* value of the property in respect of which Estate Duty is payable, exclusive of property settled otherwise than by the will of the deceased, does not exceed £300, a fixed duty of 30s.; and where such value exceeds £300 but does not exceed £500, a fixed duty of 50s. may be paid, instead of *ad valorem* duty according to the foregoing scale (F. A. 1894, s. 16 (1)).

In deciding whether the fixed duty should be paid or payment should be made according to the scale, the following considerations should be taken into account :—

(*a*) The amount payable if the fixed Estate Duty is paid on the *gross* estate or duty is paid on the *net* estate according to the *ad valorem* scale.

(*b*) Interest at the rate of £4 per cent. is chargeable on the *ad valorem* duty from the date of death in the case of personal estate and from one year from the death in the case of real estate. Such interest is not chargeable upon the fixed duties if paid within a year of the death (F. A. 1894,

s. 16 (5)), even if the estate includes personal estate as well as real estate. But if the fixed duty is paid more than a year after the death, interest is charged from the death.

(*c*) The fixed duty may be paid expeditiously by means of an adhesive stamp affixed to the affidavit.

(*d*) If the fixed duty has been paid and it is afterwards found that assets forming part of the deceased's estate have been omitted from the affidavit, so that the estate is brought over £500 and the *ad valorem* duty has to be paid, no allowance could as a general rule have been made in respect of the fixed duty, and such duty would have been forfeited. Since 1903, however (Revenue Act, 1903, s. 14), allowance can be made if the Commissioners are satisfied that there were reasonable grounds for the original estimate of the value of the property.

Where the fixed duty of 30s. has been paid and it is afterwards found that 50s. should have been paid, only the difference between the two amounts is payable, whatever was the cause of the omission.

(*e*) The fees of the Probate Court in the fixed duty cases amount to 15s. only.

(*f*) In ascertaining the gross value no deductions can be taken in respect of debts and incumbrances, but where the estate includes real or leasehold property subject to mortgages not created by the deceased, or mortgages or charges created by the deceased for the purpose of purchasing the property (F. A. 1910, s. 61 (2)), such mortgages or charges may

be deducted in fixed duty cases. And in practice, money borrowed for the purpose of building, mortgages on policies made to the issuing office as security for a loan made by it to the deceased, and also mortgages to any other person where notice of mortgage has been given to the insurance company, can be deducted.

Where the estate includes real property which is purely agricultural, the proviso to s. 7 (5) of the F. A. 1894, as to a maximum value based on the gross property tax assessment may still be applied (F. A. 1910, s. 61 (1)). (*See* pages 103 and 104.)

(*g*) Interests in expectancy or shares of joint property may in general, at the parties' option, be included in the gross estate not exceeding £500, and in that case will obtain the benefit of exemption from other duties and from aggregation, or they may if preferred, be treated as settled property. For instance, if the free estate were £480 gross and there were an interest in expectancy or a share of joint property worth £400, the fixed duty of 50s. could be paid on the free estate and *ad valorem* duty at £1 per cent. on the reversion or share of joint property, but in that case the latter would not be entitled to exemption from the £5 per cent. or £10 per cent. rates of Legacy and Succession Duty and from aggregation. (*See also* page 89 as to what properties must be taken into account as comprising the net estate not exceeding £1,000. Similar principles are applicable in dealing with estates not exceeding £300 or £500.)

Estates not Exceeding £1,000.

The above remarks bring under notice a very important provision for the benefit of small estates already incidentally mentioned: that is, where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, such property shall not be aggregated with any other property passing on the deceased's death, but shall form an estate by itself. And where the fixed duty or Estate Duty at the *ad valorem* rate has been paid on the principal value of that estate, Legacy Duty and Succession Duty shall not be payable in respect of that estate (F. A. 1894, s. 16 (3)). It was also exempted from Settlement Estate Duty, but although that duty has been abolished there is no exemption from a second Estate Duty under s. 14 of the F. A. 1914, where the estate is settled, unless proviso (*a*) applies.

Aggregation.

In ascertaining the rate of duty payable, an important principle has been introduced by the Finance Acts: viz., the principle of aggregation (F. A. 1894, s. 4, as amended by F. A. 1900, ss. 12 (2) and 18, and F. A. 1907, s. 16).

Thus it is provided that for determining the rate of Estate Duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate Duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof. For example: on the death of *A*, the following properties pass:—(1) His free, real and personal estate worth £3,000; (2) Property settled by his marriage settlement worth £4,500; (3) Real estate worth £6,000 settled upon him by his father

by deed. Now if each of these properties were taken separately, the rate of duty would be £3 per cent. for the first two and £4 per cent. for the third. But under the rule of aggregation they must all be added together to form one aggregated estate amounting to £13,500, and as the rate for an estate of this amount is £6 per cent., Estate Duty must be paid on each property at that rate.

Aggregation only affects property which is actually or notionally chargeable with Estate Duty, so that where property passing is exempted from Estate Duty it is not liable to aggregation (F. A. 1894, s. 4). For exemptions from Estate Duty, *see* Chapter IV, *infra*. But the fact that the Estate Duty chargeable on a particular fund may be covered by an allowance, *e.g.*, of Settlement Estate Duty paid on a prior death, will not render that fund immune from aggregation.

The following property, when liable to Estate Duty, is nevertheless exempt from aggregation :—

(A) Property in which the deceased never had an interest (F. A. 1894, s. 4).

(B) Estates not exceeding £1,000 in value, excluding property settled otherwise than by the will of the deceased (F. A. 1894, s. 16 (3)).

(C) Certain chattels and articles of vertu given to the nation (F. A. 1894, s. 15 (2)).

(D) Chattels of similar character certified by the Treasury to be of national, scientific, historic, or artistic interest (F. A. 1896, s. 20, as amended by F. A. 1910, s. 63).

(E) Settled property passing under a disposition made by a person dying before the F. A. 1894, which would have been liable to Estate Duty on his death if he had died after that Act (F. A. 1900, s. 12 (2), as amended by F. A. 1907, s. 16)

(F) Timber (F. A. 1912, s. 9).

(G) Property in respect of which Estate Duty is remitted in connection with deaths in the Great War. (Death Duties (Killed in War) Act, 1914.)

(H) Settled property on which Estate Duty has been commuted.

(A) Property in which the deceased never had an interest, although it passes on his death and is liable to Estate Duty, is not to be aggregated with any other property but is to be an estate by itself and the Estate Duty thereon is to be levied at the proper graduated rate on the principal value thereof. For example : if *A* effects a policy for £300 which is irrevocably nominated from the commencement in favour of his wife and children, such policy is regarded as property in which the deceased never had an interest, and Estate Duty would therefore be payable at the rate appropriate to the policy moneys as forming an estate by itself : viz., £1 per cent., and this rate is not liable to be increased by aggregation with any other property passing on *A's* death. If there were several such policies each would be an "estate by itself." If, however, as is normally the case, the deceased has a contingent beneficial interest in the policy on failure of the objects of the nomination the policy would be fully aggregable even though such interest never came into operation ; for in that case it could not be said that the deceased never had an interest (A.-G. *v.* Pearson, [1924] 2 K. B. 375.) It follows that if property passes on his death in which he had at one time an interest which he had absolutely released, or which had otherwise ceased before his death, the property would still be aggregable even though he had not an interest at his death. Property in which the deceased never had an interest includes all annuities or other interests voluntarily purchased or provided by him and coming into existence on his death, and insurances in the Customs and certain other provident funds, and also

inalienable land or chattels settled by Act of Parliament or Royal Grant (*see* pages 77-79, and *re* Abergavenny; Nevill *v.* Commissioners of Inland Revenue, [1924] A. C. 385, in which it was decided that as the property liable to Estate Duty was the interest of the successor, it was property in which the deceased never had an interest).

(B) As already noted, where the net estate, excluding property settled otherwise than by the will of the deceased does not exceed £1,000, such estate is not to be aggregated with any other property, but is to form an estate by itself (F. A. 1894, s. 16 (3)). The estate not exceeding £1,000 includes not only the deceased's free estate, *i.e.*, that which passes under his will or intestacy, but also all other property liable to Estate Duty passing on his death *except* settled property. To ascertain whether this exemption from aggregation applies, the following property must be taken into account :—

X, the property forming the "estate by itself," including—

(1) The deceased's free property ;
(2) Property over which he had and exercised a general power of appointment (*re* Augusta E. Magan, deceased (1908), 52nd Inland Revenue Report, page 87) ;
(3) *Donationes mortis causa ;*
(4) Absolute gifts made by the deceased within three years of his death ;
(5) Policies on the deceased's life which are kept up by him for a donee to whom he has given the policies ; and

Y, unsettled property which itself is entitled to be treated as an estate by itself as being property in which the deceased never had an interest, including—

(1) Annuities and other interests provided by the deceased and arising on his death ;

(2) Nomination policies in which the deceased had no contingent or other interest and insurances in the Customs and other provident funds.

If the total of *X* and *Y* does not exceed £1,000, *X* is entitled to be treated as an estate by itself and is not aggregable with any other property. Moreover, Legacy Duty and Succession Duty are not payable under the deceased's will or intestacy.

For example: the property passing on *A's* death includes—

	£	s.	d.
X.			
(1) Free estate	200	0	0
(2) Gift made within three years ..	150	0	0
(3) Policy on deceased's life kept up by him for the benefit of a donee ..	110	0	0
Y.			
(4) Annuity purchased by him for his wife and arising on his death worth	116	0	0
(5) Nomination policy	120	0	0
(6) Customs Fund insurance	130	0	0
Total of *X* and *Y* ..	£826	0	0

As the total does not exceed £1,000, the items comprised in *X* form an estate by itself which is not liable to aggregation with any other property. The rate of duty is therefore £1 per cent., and Legacy Duty and Succession Duty are not payable in respect of the free estate, value £200.

The exemption from other duties does not in strictness apply to the gift within three years, or to the policy, but in practice would probably be deemed to apply. In any case the payment of Estate Duty would cover any Succession Duty at £1 per cent. that might otherwise have been chargeable (F. A. 1894, s. 1).

Each of the items in *Y* forms an estate by itself as being property in which the deceased never had an interest. Estate Duty is therefore payable at £1 per cent. on each item.

If the total of *X* and *Y* had exceeded £1,000 and there had been property worth, say, £3,000 passing under the deceased's marriage settlement, the property in *X* would be aggregable therewith ; the rate of Estate Duty would be £3 per cent. and there would be no exemption from Legacy Duty or Succession Duty (unless the beneficiaries were widow, husband, or lineal issue) (*ibid.*). The rates of Estate Duty on the items in *Y* would, however, still be £1 per cent. It is only taken into account for the purpose of ascertaining whether the unsettled property does not exceed £1,000.

It should be noted that reversionary interests and entailed property are regarded as property settled otherwise than by the will of the deceased. Accountable parties are, however, in practice in most cases permitted to treat them, and also property of which the deceased was joint tenant in equity, as forming part of the unsettled estate not exceeding £1,000, and in that case all the advantages of so doing will follow. If, however, they are not so treated, they will be fully aggregable *inter se*, and with any other settled property, and however small their value they will not be exempt from the £5 per cent. and £10 per cent. rates of Legacy Duty and Succession Duty unless they come under the exempting provisions of the Acts imposing those duties. This option requires careful consideration, especially where the addition of a reversion or joint property is sufficient to raise the value of the free estate and unsettled property to over £1,000.

Property Settled Otherwise than by the Will of the Deceased.

Roughly speaking, all other property passing, apart from that referred to in *X* and *Y* above, constitutes property settled otherwise than by the will of the deceased

and will not therefore be included in the "estate by itself" not exceeding £1,000. Such other property comprises interests in expectancy, joint property devolving by way of settlement, and entailed property (subject as above); property over which the deceased had, but did not exercise, a general power of appointment; settled annuities (*e.g.*, an annuity purchased by *A* for the joint lives of himself and his wife and for the life of the survivor); property in which the deceased had merely a life interest; and any other property passing which was disposed of by way of settlement by some instrument other than the deceased's will so that it is limited to persons by way of succession. All such property, unless it comes under exceptions (A), (C), (D), (E), (F), or (G), is fully aggregable whether it is under £1,000 or not.

(C) It is provided, with regard to such pictures, prints, books, manuscripts, works of art, or scientific collections as appear to the Treasury to be of national, scientific, or historic interest, and to be given to or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, that the Treasury may remit the Estate Duty or any other duty leviable on or with reference to death in respect of such articles, and that such property shall not be aggregable with any other property for the purpose of fixing the rate of Estate Duty (F. A. 1894, s. 15 (2)). (*See also* page 172.)

(D) Chattels of a similar character, including those of artistic interest, may also obtain the benefit of exemption while enjoyed in kind (*see* page 79, *supra*). It is provided that they are not to be aggregated with any other property but are to form an "estate by itself" (F. A. 1896, s. 20, as amended by F. A. 1910, s. 63, and F. A. 1921, s. 44). Should a sale take place, Estate Duty is payable (unless the purchaser is one of the excepted bodies mentioned on page 79, and the sale takes place after the passing of the F. A. 1921),

and the rate of duty is fixed according to the value of the whole exempted collection at the date of the testator's death. Thus if the value of the whole collection at the death were £12,000 and a picture were subsequently sold for £3,000, Estate Duty would be payable on the £3,000 (assuming that was also the value at the date of death) at £5 per cent., that being the rate for an estate exceeding £10,000 but not exceeding £12,500. If the collection includes any articles which are sold to the excepted bodies mentioned on page 79, such articles will remain part of the "estate by itself" for the purposes of fixing the rate, although they will not be chargeable with any duty. It should be noted that when Estate Duty becomes payable it is chargeable by reference to the last death on which the property passed.

(E) Settled property passing under a disposition made by a person dying before the F. A. 1894, which would have been liable to Estate Duty if he had died after that Act (F. A. 1900, s. 12 (2), as amended by F. A. 1907, s. 16). It has been decided (A.-G. *v.* Thynne, [1914] 1 K. B. 351) that it is not correct to assume the date of death of the settlor was after the F. A. 1894, and consider whether Estate Duty would have been payable in the circumstances which actually existed at the death, but to project the death only, forward to that time, and consider what were the facts then. In the case in question the settlor died in 1876, having settled two reversions which fell in between 1876 and the date when the F. A. 1894, came into operation. If the settlor's death were projected forward to the latter date the reversions which were then in possession would have been liable to Estate Duty on her death, and the Court therefore held that the property was not aggregable, and formed an estate by itself on the death of a subsequent tenant for life. The exception includes practically all property passing under

a will taking effect before the above Act, and also, in certain cases, an instance of which is given above, property settled by deed so taking effect. Thus *A*, who dies in 1870, by will gives real estate to *B* for life and on her death to *C*; *B* dies in 1910, and Estate Duty becomes payable. The property, however, forms an estate by itself and is not aggregable with with any other property, for if *A* had died after the F. A. 1894, the property would have been liable to Estate Duty. Again, if *A* had settled the property by deed on himself for life and then on *B* for life, the result would be the same.

Where real estate is settled upon *A* for life with remainder for *B* in tail and is subsequently disentailed and re-settled upon *A* for life with remainder for *B* for life with remainders over, it is regarded for the purposes of aggregation as passing under the re-settlement and not under the original disposition (Parr *v.* A.-G., [1926] A. C. 239). It is thought that this decision is not affected by s. 22 (1) of S. L. A. 1925 under which *A* is deemed to be entitled as of his former estate. This section is construed as relating to the exercise of powers under the original settlement, whereas the question to be considered here (and the issue in Parr *v.* A.-G.) is the construction of s. 4 of the F. A. 1894.

(F) Where land includes timber, trees, or underwood, the value thereof is not to be taken into account in estimating the rate of Estate Duty. Estate Duty is payable on such timber as and when it is sold, at the rate due to the principal value of the estate apart from the timber (F. A. 1912, s. 9). (*See also* pages 113-115.)

(G) As explained on page 170, property passing more than once owing to deaths caused by the Great War was relieved from Estate Duty on the subsequent death. Further, such property was not liable to aggregation with any other property passing on such subsequent death (Death Duties (Killed in War) Act, 1914, s. 2). This applied whether any

property passed to the widow, lineal descendants, lineal ancestors or collaterals of the deceased or not.

Similarly, the first £5,000 on which duty was wholly remitted in the case of persons killed in the war was also not liable to aggregation. (*See* pages 167-171.)

The benefits of these remissions were extended under F. A. 1921, s. 43, to persons dying after 31st December, 1918, from causes arising out of the then state of disorder in Ireland, and under F. A. 1924, s. 38, to members of His Majesty's combatant forces dying after 31st August, 1921, in the circumstances mentioned in the section (*see* page 171). This last remission is not, however, to include the relief accorded to property on a second passing by s. 2 of the original Act.

(H) Settled property upon which Estate Duty has been commuted in the lifetime of the deceased was formerly considered not to be exempt from aggregation, but it has been decided that although such property passes on the death of the deceased it is not property passing "in respect of which Estate Duty is leviable" within the meaning of s. 4 of F. A. 1894 (A.-G. *v.* Howe (1925), 133 L. T. 801). Such property is not therefore aggregable with the other property passing on the deceased's death for the purpose of determining the rate of duty on the latter.

The general operation of the principle of aggregation may now be more practically explained by an example as follows: *A* dies in June, 1926, and the following properties pass on his death —:

	£	s.	d.
(*a*) His free property, value ..	260	0	0
(*b*) Insurance in the Customs Fund	500	0	0
(*c*) An interest in expectancy, value..	1,400	0	0
(*d*) Absolute gift within three years of death	120	0	0
Carried forward	£2,280	0	0

	£	s.	d.
Brought forward ..	2,280	0	0
(*e*) Property comprised in a deed of settlement by *A's* father of which *A* was tenant for life and over which he had, but did not exercise a general power of, appointment	8,000	0	0
(*f*) Property settled by him on his marriage	900	0	0
(*g*) Property settled by *A's* uncle on *A's* brother for the life of *A* and on *A's* death to *C*, value ..	25,000	0	0
(*h*) Property settled by will by *A's* uncle, who died in 1860, on *A* for life and upon his death on his children, value	16,000	0	0
(*i*) Personal property settled by will by *A's* father, who died in 1888, on *A* for life and upon his death on his children, value ..	5,000	0	0
(*j*) Personal property settled by *A* on himself for life and then on his daughter and her children. The Estate Duty expectantly payable on this property on *A's* death was commuted and paid in his lifetime, value	1,500	0	0
Total ..	£58,680	0	0

The total value of the whole property is £58,680, and the rate of duty for each property if there were no exceptions would be £16 per cent.

In the first place (*a*), (*b*), and (*d*) constitute property not settled otherwise than by the will of *A*, and as the

total value does not exceed £1,000, (*a*) and (*d*) form the "estate by itself not exceeding £1,000" and are not therefore liable to aggregation with any other property, and neither Legacy Duty nor Succession Duty is payable. The rate of Estate Duty on each item is £1 per cent.

(*b*) is not aggregable, being property in which the deceased never had an interest. It is therefore an estate by itself and the rate is £1 per cent.

(*c*), (*e*) and (*f*) are fully aggregable, and the total value being £10,300, Estate Duty is payable on each item at £5 per cent.

(*g*) is not aggregable, being property in which the deceased never had an interest. The rate on it as an estate by itself is £9 per cent.

(*h*) is also an estate by itself as it was settled by a disposition taking effect before the F. A. 1894, and would have been liable to Estate Duty if the settlor had died after that Act. The rate of duty is £7 per cent.

(*i*) being personal property which was settled by a disposition taking effect before the F. A. 1894, and having borne Probate Duty, would formerly have been exempt from Estate Duty, and therefore not aggregable. In consequence of the F. A. 1914, however, it became liable to duty (F. A. 1914, s. 14), but forms an estate by itself for the reasons given at (*h*) above. The rate of duty is therefore £3 per cent.

(*j*) is not to be brought into aggregation at all.

Value for Estate Duty.—The rate of Estate Duty having been ascertained, duty is payable on the principal value of the property at the date of death. The principal value is defined as the price which in the opinion of the Commissioners the property would fetch if sold in the open market at the time of the death of the deceased (F. A. 1894, s. 7 (5)) : that is, the gross sale price without deduction for

costs of sale. "Principal value" has been judicially interpreted as the price which the property would have fetched on the death of the deceased in the open market if it had been then sold in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property (Ellesmere *v.* Inland Revenue Commissioners, [1918] 2 K. B. 735). The term "open market" does not necessarily imply that there must be a sale by auction, nor does it imply that there must be an actual market for the property at the moment of death—for example—in the case of shares in private companies. The value is to be ascertained by the Commissioners in such manner and by such means as they think fit. If they are not satisfied with the estimated value they may authorise a person to inspect the property on their behalf and to report to them on its value, and the person in whose charge the property is must permit such inspection at all reasonable times (F. A. 1894, s. 7 (8)). Where they require a valuation to be made by their nominee the costs of the valuation are to be paid by them (F. A. 1894, s. 7 (9)), but where a valuation is submitted by the accountable parties in support of their estimate, or a valuation is called for but the valuer is not appointed by the Commissioners, they are not liable for the costs.

In estimating the principal value no reduction is to be made on the assumption that the whole property is to be placed on the market at one and the same time, but where it is proved that the value of property has depreciated by reason of the death of the deceased, the Commissioners in fixing the price are required to take such depreciation into account (F. A. 1910, s. 60 (2)). This provision mainly applies to cases where the deceased held large blocks of shares in particular companies. Naturally, if the whole block were placed on the market at the time of his death the market would decline. In fact, in arriving at the price for

Estate Duty the accountable parties are to be considered to act as reasonably prudent business men who would not throw the whole of the holding on the market at once but would realise gradually.

Interests in Expectancy.

Where the deceased was entitled to an interest in expectancy it is necessary in all cases (except where the estate apart from the reversion does not exceed £1,000) to ascertain its value, even where it is not intended to pay the duty until the reversion falls into possession, so that such value may be aggregated with the rest of the estate for the purposes of ascertaining the correct rate of duty on the latter.

The duty may be paid in respect of an interest in expectancy either with the duty on the rest of the estate or when the interest falls into possession, and if the payment is postponed, then—

(*a*) For the purpose of determining the rate of Estate Duty on the rest of the estate the value of the interest is to be its value at the date of death, and

(*b*) The rate of Estate Duty on the interest when it falls into possession is to be calculated according to its value when it falls into possession together with the rest of the estate as previously ascertained (F. A. 1894, s. 7 (6), and *re* Colonel Eyre deceased, [1907] 1 K. B. 331).

On taking out the grant, the executors have to elect whether they will pay Estate Duty at once on the reversionary interest or when it falls into possession. If they elect to pay at once they can deduct the value of the life interest or life interests upon which the property is expectant and the liability to Estate Duty is disposed of. But if they

decide to defer payment, then the value of the interest must still be aggregated with the rest of the estate to obtain the rate of duty on the latter ; and when the interest falls into possession, further Estate Duty is payable on the then principal value of the property in possession without any deduction. The rate of duty is ascertained by the aggregation of such value with the value of the rest of the estate as previously ascertained. It may happen, therefore, that where payment is deferred, a higher rate of duty becomes payable on the reversionary property than on the rest of the estate. For example : if the value of the rest of the estate were £4,800 and the value of the reversion at the death of the deceased £150, the rate of duty on the £4,800 would be £3 per cent. The value of the reversionary property when it falls into possession is, however, £250, and this sum added to the rest of the estate brings the aggregated estate to over £5,000. The rate of duty on the reversionary property would therefore be £4 per cent., while that on the rest of the estate remains at £3 per cent.

It should be remembered that a reversionary interest is regarded as property settled otherwise than by the will of the deceased, and therefore where the rest of the estate does not exceed £1,000 it is not aggregable with the reversionary interest. The reversion would, however, be fully aggregable with any other fully aggregable property passing on the death : thus, reversion £500, rest of estate £600, other settled property £850. The reversion and the settled property, being fully aggregable, are liable to Estate Duty at £3 per cent. The rest of the estate is an estate by itself and not aggregable with any other property, and the rate of Estate Duty is £2 per cent. As already explained, however, the accountable parties may, if they find it more advantageous, and the values permit, treat the reversion as part of the " estate by itself not exceeding £1,000." In that case

it would not, of course, be aggregable with any other settled property, and would also gain exemption from Legacy Duty and Succession Duty.

The option as to payment of duty on an interest in expectancy should be exercised once and for all at the time the grant is taken out, but until the grant is applied for, the election can be made even though the person upon whose life the interest depended has died. For example : *A* died in April, 1903, entitled to a reversionary interest expectant on the death of *B*, aged sixty. *B* died in October 1903, and before a grant of representation to *A's* estate had been taken out. *A's* executors can still elect to pay duty on the reversionary value notwithstanding *B's* death ; for until they file the Inland Revenue affidavit leading to the grant of representation they cannot be said to have exercised their option. They are therefore entitled to account for Estate Duty on the reversionary value at *A's* death calculated on the basis of *B's then* expectation of life and not merely on the period for which he actually survived *A*. Interest on the duty is in such a case chargeable from the death of *A*.

Where the executors elect to defer payment and afterwards wish to pay the duty before the reversion has fallen into possession—as where a sale has taken place—payment can only be made on the basis that the duty is commuted. In such cases application should be made to the Commissioners for permission to commute the duty, and this will in general be allowed if the life tenant is in ordinarily good health (F. A. 1894, s. 12). The duty is assessed on the value in possession and is discounted on a £4 per cent. basis for the life of the life tenant. The full discount would only be allowed if the tenant for life were in ordinarily good health. If he were not, or if the life interest might terminate in certain events earlier, the allowance would be proportionately reduced or the commutation might be refused (*see also*

pages 121 and 211). The practice of basing the commutation on the value in possession is followed even though the reversion has been sold, unless the circumstances are exceptional, as, for instance, in the case of a contingent interest the value of which can best be determined by a sale.

Where the deceased was life tenant of a settled fund and also entitled to a share of the capital expectant on his own death, such share should be treated for all purposes as part of his free estate.

Where the property itself passes on the deceased's death, and, subject to an intervening life interest, becomes part of the deceased's free estate, Estate Duty is apparently payable on the capital value at once under the original disposition. For instance: property is settled on the deceased for life, then on his wife for life (who survives), and then in default of children (which happens) on the deceased absolutely. Here the deceased is entitled to an absolute reversion on the death of his wife, but the property itself passes under the settlement on his death. Estate Duty is therefore payable on the principal value of the property. The duty payable on the *corpus* under the main title covers the liability to Estate Duty of the reversion unless the rate of duty under the main title is lower than that on the deceased's own estate, in which case so much further Estate Duty is payable on the reversion as will make the rate on it up to that on deceased's own estate. This, of course, can happen only when the *corpus* is liable to Estate Duty as an estate by itself, as will be the fact if the original settlement was created by the will of a testator who died before the F. A. 1894. In such circumstances the deceased's *reversion*, valued as at his death, must be brought into the Inland Revenue affidavit of his free estate for the purpose of determining the rate of duty thereon, but should be deducted in the summary. The further duty, if any, payable by reason of a

difference in rates may be paid either at once or when the reversion falls in, in the manner explained on pages 99 *et seq.* If the property is personal estate and is specifically bequeathed by the deceased's will, the Estate Duty, or at any rate the proportion attributable to the reversion, must ultimately be borne by his residuary estate as a testamentary expense and not by the settled fund, and the legatee is therefore entitled to the fund without any deduction being made on account of Estate Duty (*re* Avery ; Pinsent *v.* Avery, [1913] 1 Ch. 208).

Where the interest of a deceased reversioner is liable to be defeated by the exercise of an over-riding power of appointment it may, for the purpose of Estate Duty, be treated as of no value in his estate unless the power has been irrevocably exercised in favour of the reversioner, or has been released, or cannot be exercised owing to mental or other incapacity, or the deceased reversioner is an only child and therefore has an indefeasible interest.

Where the deceased is entitled to property on the determination of a lease, such property is not regarded as a reversionary interest (F. A. 1894, s. 22 (1) (*j*)), nor is a policy on the life of another person. The duty on such properties is payable at once on their market values at the date of death.

Real Estate and Leaseholds.

In the case of real estate and leaseholds full particulars of the property should be given showing situation, extent, tenure (*i.e.*, freehold or leasehold), gross annual value, terms of tenancy and annual outgoings payable by landlord, and finally the market value as at the death of death.

Formerly, the value for Estate Duty of purely agricultural property was limited to twenty-five times the gross property tax assessment after making the usual deductions and also deducting expenses of management not exceeding £5 per

cent. (F. A. 1894, proviso to s. 7 (5)). This provision was, however, abolished by the F. A. 1910, except in the case of the free estate not exceeding £1,000 in value (F. A. 1910, s. 61 (1)). Thus Estate Duty then became payable on the full market value of agricultural property (F. A. 1910, s. 60 (1)), except that where it includes labourers' cottages which have a special value as country cottages for townspeople and others, no account is to be taken of any such additional value (F. A. 1911, s. 18). It will be observed that the benefit of the proviso to s. 7, sub-section (5), of the F. A. 1894, is preserved as to small estates, so that where the net value of deceased's free estate is, say, £1,030, including real estate which is purely agricultural, and which if valued in accordance with the proviso would reduce the value of the estate to under £1,000, the accountable parties could claim to pay Estate Duty at £2 per cent. only, and they would also be entitled to the other benefits conferred on "free estates not exceeding £1,000." The expression "agricultural property" means agricultural land, pasture, and woodland, and also includes such cottages, farm buildings, farm houses, and mansion house (together with the lands occupied therewith) as are of a character appropriate to the property (F. A. 1894, s. 22 (1) (*g*)). It does not include any land that has a prospective value for building, mining, quarrying, or other special purpose, although at the moment it is only being used for agricultural purposes.

A further benefit in relief of agricultural property (as defined above) passing on or after 30th June, 1925, was introduced by F. A. 1925, s. 23. The effect is that the purely agricultural value of such property is exempted from the additional rates of duty imposed by that Act. The relief applies both to (*a*) agricultural property, of which no part of the principal value is due to the expectation of an increased income from such property (*cf.* proviso to

s. 7 (5) of the F. A. 1894) and also to (*b*) agricultural property which has such an expectation, as, for instance, where it has a prospective value for building, mining, quarrying or other special purpose. In both cases Estate Duty is only to be paid on the agricultural value at the rates previously in force, viz., those given in the 3rd Sched. to F. A. 1919. But as regards property (*b*), *i.e.*, where the principal value is greater than the purely agricultural value, it will be necessary to ascertain—

(1) The purely agricultural value, which is defined as the value the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, less the value of any timber, trees, wood or underwood ; and

(2) The "excess principal value," which is the difference between the principal value (*i.e.*, full market value) and the agricultural value.

Estate Duty is payable on (1) at the rates previously in force and on (2) at the rates introduced by the F. A. 1925.

If the property is subject to a properly deductible mortgage, debt or incumbrance an apportionment is to be made between the two values mentioned above.

It will be observed that the agricultural value is not to include the value of any timber, etc., growing thereon, and therefore where such timber is sold the Estate Duty payable in respect thereof in connection with a death on or after 30th June, 1925, will be chargeable at the increased rates imposed by the F. A. 1925.

Deductions.

From the gross value of the deceased's free estate deduction may be taken for debts and incumbrances, including mortgages and terminable charges (F. A. 1894,

s. 22 (1) (*k*)) and reasonable funeral expenses, but no allowance can be claimed for the following :—

(*a*) Debts incurred or incumbrances created by the deceased which were not incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit.

(*b*) Any debt in respect whereof there is a right of reimbursement from some other person or estate, unless such reimbursement cannot be obtained.

(*c*) More than once for the same debt or incumbrance charged upon different portions of the estate (F. A. 1894, s. 7 (1), and *see* Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198).

Thus, where the deceased in his lifetime covenants to pay a sum on his death to his daughter, no deduction could be made because the debt was voluntary and not created for full monetary consideration (Lord Advocate *v.* Alexander's Trustees (1905), 42 S. L. R. 307). The sum would be payable to the daughter without any deduction for Estate Duty, which would therefore fall on the rest of the deceased's estate (Gray *v.* Gray, [1896] 1 Ch. 620). A sum covenanted to be paid by deceased under a deed of separation between him and his wife is, however, regarded as created for full money consideration, and is therefore deductible, but not so as regards any sum or annuity agreed to be paid on the termination of an irregular connection, unless perhaps so far as the deceased was under any legal liability with regard to any issue of the union. Where the deceased guarantees a debt, the amount payable under the guarantee may not be deducted unless it is actually paid and cannot be recovered from the principal debtor. Thus,

if the deceased has during his lifetime guaranteed an overdraft on a bank to his son and the son becomes insolvent so that the deceased's estate is called upon to pay, an allowance could be claimed. Where the deceased promises to give a subscription to a charity and such sum is unpaid at his death, no deduction may be taken (Lord Advocate *v.* Gunning's Trustees (1902), 39 S. L. R. 534).

Where property passing is subject to a terminable annuity, the value should be deducted where the annuity was charged on the deceased's free real or leasehold property by a predecessor in title, or by the deceased himself for full consideration in money or money's worth. Deduction of the value should also be taken where annuities and future capital sums equivalent to the annuities have been charged on property prior to its being put in settlement (De Freyne *v.* Inland Revenue Commissioners, [1916] 2 I. R. 456). Otherwise the proper deduction for an annuity would be a slice of the property sufficient to produce it. This would be the case where settled real and personal property passes on the death of a tenant for life subject to a continuing annuity (irrespective of whether the annuitant is the person who then succeeds to the property or not), and where settled real or personal property passes on the death of a tenant for life to a person who, prior to the tenant for life's death, was entitled to an annuity which terminates on that event, provided the annuity was a charge on the property itself, or was payable out of income in priority to the interest of the tenant for life (A.-G. *v.* Glossop, [1907] 1 K. B. 163). No allowance would be made if it was merely a charge on the interest of the tenant for life and the settled property was unaffected thereby (Cowley *v.* Inland Revenue Commissioners, [1899] A. C. 198.

No deduction can, of course, be taken for an annuity charged by deceased on his free estate during his life,

unless created for full consideration in money or money's worth, nor may any deduction be taken for an annuity he has voluntarily agreed to pay (Lord Advocate *v.* Alexander's Trustees (1905), 42 S. L. R. 307).

Debts or incumbrances for which allowance is claimed are to be deducted from the value of the land or property subject thereto, and deduction is not to be taken more than once for the same debt or incumbrance charged on different portions of the estate (F. A. 1894, s. 7 (1)).

In the case of the death of a married woman, no deduction should be made in respect of her unpaid income tax or super tax unless she was living apart from her husband or was separately assessed. The husband is solely liable and has no right of indemnity against his wife or her estate (*In re* Ward ; Harrison *v.* Ward, [1922] 1 Ch. 517). Nor can deduction be justified in respect of necessaries, *e.g.*, medical attendance or clothing which it was the husband's duty to provide, unless it can be demonstrated either that she had in fact made herself primarily liable for them or that she was liable though not primarily and the husband was unable to pay.

Foreign Debts.

Debts due from the deceased to persons resident out of Great Britain are to be deducted primarily against the deceased's personal estate so situate and (unless contracted to be paid in Great Britain, or charged on property in Great Britain) they can only be allowed against the English personal estate to the extent to which the personal estate outside Great Britain is insufficient (F. A. 1894, s. 7 (2)). It follows that where the deceased was domiciled outside Great Britain and Estate Duty is not payable on his personal estate so situate, his foreign or Colonial debts may not be

deducted against the English personal estate except to the extent the foreign or Colonial personal estate is shown to be insufficient for payment.

Foreign Property.

In the case of foreign property which is liable to Estate Duty, deduction may be claimed for any foreign duty payable on that property (F. A. 1894, s. 7 (4)), and also for *extra* expenses of administration not exceeding £5 per cent. where the Commissioners are satisfied that such expense has been incurred by reason of the property being situated out of this country (F. A. 1894, s. 7 (3)). The general rule is that expenses of administration are not deductible against property on which Estate Duty is payable, but in the case of foreign property the *extra* expense of administration up to £5 per cent., *i.e.*, the difference between the probable expenses of administration if the property had been in Great Britain and the expenses *actually* incurred in administering the foreign property, is allowable.

Allowance of Colonial Duty.

In the case of property in certain British Possessions, which either charge no duty on property in Great Britain or make a corresponding allowance, and are designated by the Sovereign by Order in Council, allowance is made *against the Estate Duty* payable on such property in this country, of any duty that may be payable in such British Possession (F. A. 1894, s. 20). (As to the duties payable in British Possessions, *see* Hanson's Death Duties, 7th Edition, p. 561.)

The allowance is not in any case to exceed the amount of Estate Duty payable on the same property in this country, and it can of course apply only in cases where the deceased died domiciled in Great Britain.

Orders in Council have been made applying this provision to the following British Dominions and Colonies :—

British Possession.	Date of Order in Council.
Australia, Commonwealth of*	1916 27th June
Bahama Islands	1895 11th May
Barbadoes	1896 29th June
Bermudas or Somers Island	1895 11th May
British Columbia	1896 26th Oct.
British Guiana	1896 22nd Feb.
Ceylon	1895 11th May
Falkland Islands	1895 3rd Oct.
Fiji	1895 24th Aug.
Gambia	1895 11th May
Gibraltar	1895 16th July
Gold Coast Colony	1895 16th July
Grenada	1909 18th Oct.
Hong Kong	1895 11th May
India, British	1895 2nd Feb.
Jamaica	1897 3rd Aug.
Labuan	1897 18th May
Lagos (now Nigeria)	1895 16th July
Leeward Islands	1895 16th July
Manitoba	1896 26th Oct.
Mauritius	1922 14th Dec.
New Brunswick	1897 26th Feb.
New South Wales	1905 29th May
New Zealand	1895 2nd Feb.
Newfoundland	1895 8th Mar.
Nigeria (*see* Lagos).	
Nova Scotia	1898 20th Oct.
Ontario	1896 26th Oct.
Papua	1916 10th May
Quebec	1897 15th Jan.
St. Lucia	1916 1st June
Sierra Leone	1896 8th Feb.
Somers Island (*see* Bermudas)	1895 11th May
South Australia	1895 11th May
Straits Settlements	1895 11th May
Tasmania	1897 13th Oct.
Trinidad and Tobago	1897 13th Aug.
Victoria	1896 8th Feb.
Western Australia	1896 1st Aug.
Yukon Territory	1910 10th Jan.
Also to the following Countries under the Foreign Jurisdiction Act, 1913 :—	
East Africa Protectorate (now Kenya)	1920 17th May
Gambia Protectorate	1916 6th Nov.
Nyasaland	1915 12th Aug.
Southern Rhodesia	1915 12th Aug.
Swaziland	1915 12th Aug.
Uganda Protectorate	1917 23rd Oct.
Wei-hai-wei	1915 24th Sept.
Zanzibar	1916 6th Nov.

* This order is retrospective and applies so that the federal duty as well as the State duty (if s. 20 has been applied) is allowable.

The section does not apply to the Union of South Africa comprising the Cape of Good Hope (Order revoked as from 31st December, 1908), Transvaal, Orange River Colony and Natal (Order revoked as from 30th June, 1922), Queensland, Northern Rhodesia and Feudatory Native States of India.

The Malay States have been brought within the scope of s. 20 (F. A. 1922, s. 45), but no allowance under that section can be made until an Order in Council has been issued.

A similar allowance may be made of the Consular Court fees payable in Crown Colonies and Treaty ports under Consular jurisdiction.

The Colonial assets themselves should be accounted for without deduction except for debts due in the Colony and extra expense of administration, as in the case of foreign property. (*See also* p. 200 as to practice.)

Where an Order in Council has not been applied to any British Possession, it is conceded that the Colonial duty may be allowed as a deduction against the property, although in strictness the allowance conferred by s. 7 (4) of the Finance Act, 1894, is confined to property in a "foreign country." A similar allowance has been conceded in the case of shares in non-British companies, which owing to their being registered on a British register are considered in English law to be assets of Great Britain, but are deemed by the law of the particular Colony where the company carries on business to be situate in that Colony, and may not be transferred until duty in that Colony has been paid (*see* p. 13).

The allowance against Estate Duty only applies to assets in a British Possession and therefore cannot be made in respect of assets which, though possessing Colonial characteristics, are in strictness English. For instance, shares in a Colonial company which are registered on a

register in England and are transferable in Great Britain without any act done outside, and bonds of a Colonial company transferable by delivery and actually situate in England at the death.

The provisions of s. 20 of the F. A. 1894 have not themselves been applied to the Irish Free State, but a similar arrangement is effective with that country by virtue of the provisions of Part II of the Schedule to the Relief in respect of Double Taxation [Irish Free State] Declaration, 1923 (S.R. & O., 1923, No. 406). This Declaration, made under special powers to that effect contained in s. 5 of the Irish Free State (Consequential Provisions) Act, 1922, provides—

(1) Where the Commissioners of Inland Revenue are satisfied that Estate Duty is payable in the Irish Free State by reason of a death of a person dying on or after the first day of April nineteen hundred and twenty-three in respect of any property situate in the Irish Free State and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in Great Britain in respect of that property on the same death, and

(2) Where the Revenue Commissioners of the Irish Free State are satisfied that Estate Duty is payable in Great Britain by reason of a death of a person dying on or after the said first day of April in respect of any property situate in Great Britain and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate Duty payable in the Irish Free State in respect of that property on the same death.

An identical arrangement is also in force as between Great Britain and Northern Ireland under the terms of s. 28 of the Government of Ireland Act, 1920.

Mortgages on Settled Property.

Where settled property passes on the death of a life tenant which he and the remainderman had combined to mortgage, the mortgage may be deducted (Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198), but not where the life tenant is indemnified against interest on the mortgage (A. G. *v.* Lord Montagu, [1904] A. C. 316). In such a case he receives the full income to which he was entitled under the settlement, and therefore on his death the whole property is considered to pass and not merely the equity of redemption.

Where the mortgage debt is allowable, Succession Duty at the higher rates would be payable in respect of the same even though the rest of the property were exempted from such duty by the payment of Estate Duty (*re* Trevor B. Hamilton's Estate (1905), 39 Ir. L. T. 272). The succession in effect would extend to so much of the property as escapes Estate Duty.

Timber.

Should the estate include land on which timber, trees, or underwood are growing, the value of such timber, etc., is not to be taken into account in estimating the principal value of the estate or the rate of Estate Duty, and Estate Duty is not to be payable thereon, but shall, at the rate appropriate to the principal value of the estate, be payable from time to time on the net moneys, after deducting all necessary outgoings (as to which *see* page 335) since the death, received from the sale of such timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes

liable, or would but for this provision have become liable, to Estate Duty. The owners or trustees are required to account for the duty as and when the moneys are received, with interest at £4 per cent. from the date of receipt. But if at any time the timber is sold unfelled either with or apart from the land, Estate Duty is payable on the principal value thereof at the date of death, after deducting any Estate Duty paid since the death (F. A. 1912, s. 9, and proviso to subsection 5 of s. 61 of the F. A. 1910). The effect is that where an estate includes timber, the Estate Duty is payable from time to time on the proceeds of sale of timber, trees, or wood, when felled or cut, as and when sales are effected, provided that the aggregate amount on which duty is paid from time to time does not exceed the principal value of all the timber as at the death of the deceased. But if the timber is sold unfelled with or apart from the land, Estate Duty is then payable on the principal value at death, subject to an allowance in respect of any Estate Duty paid on the proceeds of felled timber since then. Where the sale of *unfelled* timber is a partial one, duty is payable, not on the net proceeds, but on the proportion of the total principal value of the timber at the date of death which the sold part bears to the whole. In the result, it would seem that where the timber as a whole is sold, the natural increase in value since death escapes taxation. The *rate* of Estate Duty is ascertained without regard to the value of the timber, etc. No duty is chargeable on moneys realised from the sales of underwood when cut. Underwood has been defined as a species of wood which grows expeditiously, and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits, and then only when treated as underwood (Reg. *v.* Ferrybridge (1823), 1 B. & C. 375).

Miscellaneous.

As to deductions which may be taken in the case of small estates in respect of which the fixed duties of 30s. or 50s. are to be paid *see* page 84.

The duty payable on the Inland Revenue affidavit is to be due on the delivery thereof or on the expiration of six months from the death, whichever first happens (F. A. 1894, s. 6 (7)).

Interest at £4 per cent. is charged from the date of death in respect of Estate Duty on personal estate (F. A. 1896 s. 18 (1), as amended by F. A. 1919, s. 30).

Instalments.

In the case of real estate the accountable parties have an option of payment by instalments: viz., by eight equal yearly instalments or by sixteen equal half-yearly instalments, the first of which is due at the end of one year from the death, and after that date interest at £4 per cent. (F. A. 1919, s. 30) is payable on the duty for the time being unpaid. The duty for the time being unpaid may be paid at any time with interest to the date of payment, and if the property is sold all the unpaid instalments must be paid on completion with interest to the date of payment (F. A. 1894, s. 6 (8)). A similar result follows as regards instalments of Estate Duty payable in connection with deaths after 1925 in respect of land sold, exchanged or mortgaged (L. P. A. 1925, s. 17 (3) and L. R. A., 1925, s. 73 (6)).

If the Estate Duty is paid in full within the year no interest is charged, neither is discount allowed. But if the property is sold within the year, interest on the duty is chargeable from the date of completion of the sale.

Should the owner die before all instalments are paid, the unpaid instalments are still payable and are a charge on the property in the hands of the successor. The same rule

applies in the case of land settled by Act of Parliament or Royal Grant except that the unpaid instalments are due from the successor's estate and are not a charge on the property unless the option given by s. 44 of the F. A. 1922 has been exercised.

Where Estate Duty is payable under F. A. 1894, s. 2 (1) (*d*), in respect of an annuity or other definite annual sum, whether terminable or perpetual, provided by or in concert with the deceased, the duty may be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the deceased's death, and after that date interest on the unpaid duty is to be paid with each instalment (F. A. 1896, s. 16). The duty unpaid may be paid at any time. This provision deals with annual sums arising on the deceased's death where the duty is paid on the value of the life interest. It does not refer to cases of Estate Duty chargeable on annuities *ceasing* on the deceased's death where duty is taken on a "slice" of the property sufficient to pay the annuity. Thus *A* retires from business on terms that he shall receive an annuity of £500 for life, and on his death his wife an annuity of £300 for life. On the death of *A* Estate Duty is payable on the value of the annuity of £300 for the life of the widow, and the duty may be paid by four instalments as stated above.

Transfer of Property on payment of Duty.

The Commissioners may, if they think fit, on the application of any person liable to pay Estate Duty or Settlement Estate Duty on real and leasehold property, accept in satisfaction of the whole or part of such duty such part of the property as may be agreed upon (F. A. 1910, s. 56 (1)). No Stamp Duty is to be payable on the transfer of such property (*ibid.*, sub-section (2)) and the

Commissioners are to deal with it in such manner as Parliament may determine (*ibid.*, sub-section (3)). It is entirely within the discretion of the Commissioners as to whether they will themselves accept property under this provision. They may, however, act as intermediaries for any other public department or authority which may desire to purchase.

Quick Successions.

The F. A. 1914 introduced a provision allowing discount in respect of land or a business where there has been a second death within five years (F. A. 1914, s. 15). If the Commissioners of Inland Revenue are satisfied (*a*) that Estate Duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, and (*b*) that the person to whom such property passed has died within five years, and Estate Duty has again become payable on the same property or any part thereof, then they are to reduce the second Estate Duty as follows :—

Where the second death occurs within 1 year of the first death by	..	50 per cent.
Where within 2 years by	.. ..	40 ,,
,, ,, 3 ,, ,,	.. ..	30 ,,
,, ,, 4 ,, ,,	.. ..	20 ,,
,, ,, 5 ,, ,,	.. ..	10 ,,

But where the value on the second death is greater than the value on the first death, the latter value is to be substituted for the purpose of calculating the amount of the allowance. Thus, value on the death of *A* £6,000, and duty at, say, 5 per cent. = £300 ; value on the death of *B*, who dies within three years of *A*, £9,000, and duty

at, say, 7 per cent. = £630. The discount is not 30 per cent. on £630, but 30 per cent. on £420 (*i.e.*, 7 per cent. on £6,000) = £126. The amount payable on *B's* death will therefore be as follows :—

	£	s.	d.
Duty..	630	0	0
Discount	126	0	0
Net amount payable ..	£504	0	0

It will be noticed that the Commissioners have to be satisfied that duty has become payable on the first death, and that the person who *then* took has died within five years, and that Estate Duty has again become payable on the same property or any part thereof. The person who becomes entitled on the first death may take absolutely, for life or any lesser interest. If his death gives rise to a claim for Estate Duty on the same property, or any part thereof, the provision applies. But it is only on his death that the discount can be claimed. If he sells and the purchaser dies within five years the provision would not apply. But if a third death occurs within five years of the second death the provision for relief again comes into operation, and the second death is treated as the first death, and the third death as the second death.

For the purposes of discount the full amount of Estate Duty is regarded as having been payable on the earlier death, and, therefore, where on the first death there was a remission of Estate Duty under the Death Duties (Killed in War) Act, 1914, or an allowance of Settlement Estate Duty under F.A. 1914, s. 14 (*b*), discount on the second death can still be allowed, even though the Estate Duty on the first death was covered by the allowance under either or both the above Acts. If on the second death

Settlement Estate Duty falls to be allowed, it is deductible against the Estate Duty after the quick succession discount has been made.

The term "land" includes buildings thereon, and also real estate subject to a trust or power to sell, provided there has been no conversion before the second death.

It will be observed that the section refers to any interest in land or a business, and this phrase has been the subject of a recent decision in Scotland in the case of Glen, deceased, Glen *v.* Inland Revenue Commissioners, [1925] S. L. T. 657, in which the Lord President said, "Whatever may be the precise content of the expression, 'any interest in land' and 'any interest in a business,' it seems safe (having regard to the intention of the enactment) to say that the interest referred to must be such that the exhaustion of it in paying repeated Estate Duties will be detrimental to the landed estate or to the business, as the case may be. In other words, the interest must be such that its fate and fortune is one with the fate and fortune of the land or business . . . the fact that the *jus crediti* in the secured charge or in the loan of capital passes several times on successive deaths, and so suffers exhaustion (more or less) in the hands of those who succeed to it by the payment of Estate Duty, has no prejudicial effect on either the landed estate or the business." It follows from this decision that mortgages in England and heritable bonds in Scotland are not "interests in land" for the purpose of s. 15, and the same applies to capital sums, *e.g.*, portions charged on land. Rent charges, annuities or jointures charged on land and annuities charged on a business would however come within the section as being interests in land or a business.

Where part of any land has been sold between the two deaths it will be necessary to apportion the original value for the purpose of seeing whether the value of the

unsold portion is greater or less than the value on the second death. Where money has been spent in improving the land, or in erecting buildings, the provision for substituting the value on the first death for the purpose of ascertaining the discount will apply.

In the case of a business it is to be noted that the provision does not apply to a business carried on by a company. Under s. 285 of The Companies (Consolidation) Act, 1908, a "company" means a company formed and registered under that Act, or an existing company, and an existing company means a company formed and registered under the Joint Stock Companies Acts or under The Companies Act, 1862. Under s. 121 of the Companies (Consolidation) Act, 1908, for the purposes of that Act a "private company" means a company which by its Articles, restricts the right to transfer its shares, limits the number of its members (excluding employés) to fifty, and prohibits any invitation to the public to subscribe for shares or debentures. Where, therefore, the business has been transferred to a private company, even though the deceased practically remained the owner of the business, the provision as to discount would not apply, nor would it apply to the proceeds of sale of land or a business. The relief as regards a business apparently applies to stock-in-trade, goodwill, plant, and machinery, book debts to the extent to which they exceed the trade debts, and bank balance so far as it is exclusively used for the business, but not to securities for money, stocks and shares.

It should be noted that the relief afforded by this provision to the widow, lineal ancestors, lineal descendants or collateral relations of the deceased, was not to apply where they obtained (*i.e.*, on the second death) a greater relief from Estate Duty under s. 1 of The Death Duties (Killed in War) Act, 1914 (*see* page 167 *et seq.*).

Corrections.

Should it be found that too little duty has been paid, owing either to assets being omitted from the Inland Revenue affidavit or account, or to the value of any assets being underestimated, the matter should be corrected by a corrective affidavit or account (F. A. 1894, s. 8 (7)). Similarly, if too much duty has been paid by reason of assets being wrongly included or over-estimated (F. A. 1894, s. 8 (12)). In the latter case the appropriate amount of duty is returned with the interest actually paid thereon. Duty is not considered to earn interest in the hands of the Revenue, and therefore in cases of return of duty it is not allowed for the period it has been in hand except where the over-payment was due to an over-valuation by the Commissioners (*ibid.*) or where the Court orders the Commissioners to pay interest on duty repayable (Sprot's Trustees *v.* Lord Advocate (1902), 10 S. L. T. 452).

Commutations.

Under s. 12 of the F. A. 1894, the Commissioners are empowered at their discretion to commute the Estate Duty in respect of an interest in expectancy and in arriving at the sum payable they are required to set a present value on the duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, interest being reckoned at £4 per cent. The case of reversionary interests has already been dealt with (pages 99-103), but the question also arises when settled property is being taken out of settlement or dealt with in such a manner as to render it expedient to free it from future claims for duty. Thus where a life tenant and remainderman combine to sell or the life tenant releases his interest to the remainderman or *vice versa*, or both assign their interests to a third party, or settled personal estate is being divided up, the question

of liability to future claims for duty should be carefully considered. As a rule the duty involved in a commutation is Succession Duty, but where Estate Duty is involved it should be borne in mind that there is no obligation on the Commissioners to agree to a commutation, and in view of the decision in A.-G. *v.* Howe (1925), 133 L. T. 801, noted on page 95, that the property is not aggregable with the other property which ultimately passes when the death takes place, it seems likely that a commutation of Estate Duty affecting settled property will not always be feasible. As concerns land, which, by L. P. A. 1925, s. 205 (1) (ix) includes land of any tenure, mines and minerals, buildings and other corporeal and incorporeal hereditaments, a purchaser need not as a general rule concern himself as to any future claims for duty. For when the sale is made by the trustees or estate owner under a trust or power in a will or settlement, or by the life tenant under the powers of the S. L. A. 1925, the presumptive future claims for duty under the will or settlement shift from the land to the proceeds of sale in the hands of the trustees. And in other cases the conveyance can, it is presumed, now be made in such form that the future liability for duty is over-reached and does not attach to the land in the hands of the purchaser. It should, however, be borne in mind that it is only a purchaser who is protected (L. P. A. 1925, s. 16 (4)). As the trustees and other accountable parties remain liable, it may be desirable in their interests to dispose of the future claims affecting any settled, real or personal property (*see* Ewing's Trustees *v.* Mathieson (1906), 44 S. L. R. 12 and A.-G. *v.* Chambres, [1921] 1 K. B. 173) and in that case a commutation should be applied for. Thus, if the settled property is sold and the proceeds of sale divided up, and the tenant for life is in ordinarily good health, application should be made to commute the duty expectantly payable

on his death. If the proceeds are divided up in proportion to the interests of the beneficiaries, the life tenant taking approximately the equivalent of his life interest, no Estate Duty would be payable, and Succession Duty would be commuted. The position would be the same in the case of a money fund or other settled personal estate.

If, however, the moneys were invested and the income paid to the life tenant on the trusts of the original disposition, Estate Duty would be involved and Succession Duty as well, if chargeable, but if the funds are held by responsible trustees, a commutation would not be essential as the duties when payable would be satisfied out of the substituted securities.

Where the life tenant releases his life interest, Succession Duty would be commuted; but if he died within three years of the release, Estate Duty would become payable (F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) and (3)), and if the payment of Estate Duty exempted the property from Succession Duty, the Succession Duty already paid would be returned on application being made. The Estate Duty presumptively payable if the life tenant should die within three years of the release of his life interest cannot be made the subject of a commutation and provision should be made to meet any such claim either by setting aside a sufficient sum, or in some other way (*see* Taylor *v.* Poncia, [1901] W. N. 87).

Where Succession Duty only is commuted, it is chargeable at the higher rates (*see* page 323), unless, in the case of settled property, there has been a payment of Estate Duty in connection with an earlier death.

Where real property subject to an annuity is sold and the annuitant receives a proportion of the purchase money approximately equal to the value of his annuity, or such proportion is applied in purchasing an annuity, there would

be no expectant liability to Estate Duty on the death of the annuitant, but application should be made to commute Succession Duty. But if a proportion of the purchase moneys were set aside and invested to pay the income to the annuitant for life or if his annuity were charged substitutively on other property, Estate Duty would be payable on the annuitant's death on the funds set aside or on the substituted property (A.-G. *v.* Smith-Marriott, (1899) 2 Q. B. 595, and A.-G. *v.* Hippisley, (1926) unreported) and no commutation would be necessary. If, however, a life tenant of settled property surrenders his interest to the remainderman in consideration of an annuity charged on other property, the Estate Duty presumptively payable on his death would remain a charge on the settled property (F. A. 1900, s. 11 (1)) and if it were sold, application to commute the Estate Duty should be made.

In commutation cases the duty is calculated on the value in possession and discounted on a £4 per cent. basis for the life of the life tenant (*see* page 211 *et seq.* as to practice).

For the purpose of ascertaining the rate of Estate Duty, all property presumptively passing under the disposition under which the commutation is being made is to be taken into account. Thus, if under a settlement considerable real estate is settled on *A* for life and a part of it is sold or dealt with in such circumstances that it is necessary to commute the Estate Duty presumptively payable on *A's* death, all the property subject to the settlement which will presumptively pass on *A's* death must be aggregated to find the rate of duty on the property dealt with. Subject as above, no other property which may be expected to pass on the life tenant's death, such as his free estate, is to be taken into account for aggregation.

CHAPTER III.

PERSONS ACCOUNTABLE.

Executor.

In considering the liability of the Executor, property may be divided into—(A) Personal property passing to the Executor as such and other personal property of which the deceased was competent to dispose ; (B) Property under the Executor's control by virtue of any testamentary disposition of the deceased ; and (C) Property which is not under the Executor's control.

As regards (A) the Executor is accountable (F. A. 1894, ss. 6 (2) and 8 (3)), and must pay the Estate Duty on personal property of which the deceased was competent to dispose at his death on delivering the Inland Revenue Affidavit (*ibid.*, s. 6 (2)). This liability presumably now extends to the deceased's interest in land held under a tenancy in common (L. P. A. 1925, s. 34 and 1st Schedule, Part IV, para. 1).

As to (B) he may pay the duty if he thinks fit (F. A. 1894, s. 6 (2)). Such property formerly comprised freehold property charged with debts or devolving upon him under the provisions of the Land Transfer Act, 1897. Now, however, as regards claims for duty arising after 1925, payment of the duty in respect of land in England or Wales, including settled land, is made obligatory on the Executor and his liability in this respect is separately dealt with on page 149, *infra*, under the heading "Land."

As to (C) the Executor may pay the duty on delivering the Inland Revenue Affidavit if requested to do so by the accountable parties.

The Executor must specify in the Inland Revenue Affidavit to the best of his knowledge and belief, all the property upon which Estate Duty is payable on the deceased's death (F. A. 1894, s. 8 (3)). He must do this whether he is accountable for the Estate Duty on such property or not. Should he not be able to give particulars of any property passing he should state in the affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes to account for it and pay the duty for which he is liable and any further duty (*e.g.*, where an increased rate becomes payable in consequence of aggregation) payable by reason thereof on the other property in the affidavit (*ibid.*, s. 6 (3)). He must however make full enquiry before presenting the Inland Revenue Affidavit and pay the Estate Duty on the whole of the testator's personal estate that he knows of, notwithstanding that only a limited grant of representation is being applied for (In the Goods of Baron Grimthorpe ; Beal *v.* Grimthorpe, *Times*, 6th June and 1st and 8th August, 1905). He must use diligence in order to ascertain the value of any property and may not delay payment of duty on the ground that the value of the property cannot be ascertained until it has been sold (*in re* Horrex, *Times*, 9th March, 1910). Duty may, however, be accepted on a nominal or round sum in very exceptional cases, as, for example, where the Executor cannot obtain adequate particulars of the estate or of the value thereof until a grant has been obtained and a grant is urgently required. In such cases application should be made to the Controller of the Estate Duty office, with a full statement of the circumstances and an undertaking, if the request is agreed to, to render as soon as possible, a Corrective Affidavit giving full details of the estate, and to pay any additional duty.

It should be noted that "Executor" has a wide meaning in connection with Estate Duty (F. A. 1894, s. 22 (1) (*d*)), and includes not only the Executor or Administrator of the deceased, but also any person who takes possession of or intermeddles with the personal estate of the deceased. (Compare the definitions of "Personal Representative" in the L. P. A. 1925, s. 205 (1) (xviii), and L. R. A. 1925, s. 3 (xvii)).

The liability of Executors *de son tort* was considered in the case of New York Breweries *v.* A.-G., [1899] A. C. 62, where on the death of a domiciled foreigner owning shares in an English company, the shares were transferred by the company direct into the names of the foreign Executors without the production of an English grant of representation, no Estate Duty having been paid. It was held that the company had made themselves Executors *de son tort* by having taken possession of and administered part of the testator's estate, and were accountable for such duty as would have been payable if probate had been obtained in England. The securities can only be dealt with in such cases on production of a duly constituted English grant of representation.

As regards (A) a person is deemed competent to dispose if he has such an interest in property or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not, and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of the property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as tenant for life under the Settled Land Act or as mortgagee (F. A. 1894, s. 22 (2) (*a*)). The only limitation of the Executor's liability in respect of personal

property of which the deceased was competent to dispose as above is that he is not liable for any duty in excess of the assets which he has received as Executor or might, but for his own neglect or default, have received (*ibid.*, s. 8 (3)).

The liability of the Executor under this heading covers (1) personal property passing to the Executor as such, that is the deceased's free personal property in Great Britain and (2) other personal property of which the deceased was competent to dispose.

As regards (1) the liability is personal, and the unpaid duty becomes a debt due to the Crown from the Executor (*ibid.*, s. 8 (1), incorporating S. D. A. 1853, s. 44). The beneficiaries of the property are not themselves liable for the duty, which is payable out of the general personal estate.

But as regards (2) although the Executor is required to pay the duty, it is also a charge on the property (F. A. 1894, s. 9 (1)) and ultimately must be borne by the property itself. It includes the following :—

(*a*) Moveable assets out of Great Britain ;
(*b*) Joint personal property ;
(*c*) Personal property over which the deceased had and exercised a general power of appointment ;
(*d*) Entailed personal estate.

(*a*) *Foreign assets.*

Where a deceased person domiciled in Great Britain dies possessed of moveable property situate out of Great Britain, his Executor is liable for the British Estate Duty thereon, and this is so even where the testator has appointed separate Executors resident out of Great Britain for such non-British property (*In re* Consuelo Duchess of Manchester ; Duncannon *v.* Manchester, [1912] 1 Ch. 540). The liability of the British Executor is, however, limited by the amount

of the British assets ; so that if the duty on the non-British assets actually exceeds the amount of the British assets, the British Executor would not be liable for any balance of duty after he had paid over the whole of such British assets to the Revenue (*ibid.*). Foreign assets, however, not coming under the control of the Executor by virtue of his British grant of representation do not constitute property passing to the Executor as such, and, except as to assets in a British possession, the duty thereon is a charge on the property itself (*see page* 136). It should be paid by the Executor out of the personal estate in this country and recovered from the foreign Executors or owners (*re* Scull ; Scott *v.* Morris (1917), 118 L. T. 7).

(*b*) *Joint personal property.*

This property comes within the definition of competency to dispose, and therefore, the Executor is accountable for the duty. It does not, however, constitute property passing to him as such, and thus the duty is a charge on the property (*ibid.*, s. 9 (1)) and must ultimately be borne by the deceased's share of the joint property.

(*c*) *Appointed property.*

After much conflict of opinion it was finally decided by the House of Lords that property passing to the Executor as such did not include personal property, over which the deceased had and exercised a general power of appointment (*re* O'Grady ; O'Grady *v.* Wilmot, [1916] 2 A. C. 231), and therefore the Estate Duty on such property is, in the absence of an express direction in the Will, a charge thereon, and not payable out of the general residue. As, however, the deceased was competent to dispose of such property, his Executor is accountable for the Estate Duty, but is entitled to be reimbursed out of the appointed property.

(*d*) *Entailed personal property.*

Under the L. P. A. 1925, s. 130, personal property may now be entailed, and, as it comes within the definition of property of which the deceased was competent to dispose, the Executor is accountable for the duty thereon, but, as the entailed property does not constitute property passing to the executor as such, the duty must ultimately be borne by the property itself.

Works of Art.

The general liability of the Executor in respect of personal estate, is subject to an exception in the case of pictures and other works of art certified by the Treasury to be of national, scientific, historic, or artistic interest, and so exempted from Estate Duty until sold.

The Executor is not accountable for the duty when a sale takes place (*see* F. A. 1896, s. 20, as amended by F. A. 1910, s. 63), although he is bound to give particulars of such articles in the Inland Revenue Affidavit. Where there is a direction that the Estate Duty payable " upon or by reason of " the testator's death is to be paid out of residue, the Executor is not concerned to make provision for the Estate Duty which would become payable when the property is sold (*In re* Lord Leconfield ; Wyndham *v.* Leconfield, 90 L. T. 399). In the absence of a clear direction to the contrary in the will, the beneficiary must bear the duty which becomes payable on sale even though the chattels are sold before the Treasury certificate is received (*re* Scott ; Scott *v.* Scott, [1916] 2 Ch. 268).

As regards property (C), *i.e.*, property not under the Executor's control he may, if the parties accountable request him to do so, pay in like manner the Estate Duty thereon (F. A. 1894, s. 6 (2)).

For instance, he may at such request pay the Estate Duty on property comprised in the deceased's marriage settlement

in which the deceased had only a life interest. The duty, if in the first instance paid out of the free personal estate, would be recovered from the trustees or owners of the trust property.

Both as regards property on which the Executor is bound to pay the duty, and property on which he elects to pay on request, he has power to raise the amount of the duty (with interest and expenses properly paid or incurred) by the sale or mortgage or terminal charge on the property, or any part thereof, and this is so whether the property is or is not vested in him (F. A. 1894, s. 9 (5)).

The Estate Duty so payable by the Executor is to be collected on an Inland Revenue Affidavit (F. A. 1894, s. 6 (2)) and is to be due on the delivery thereof, or on the expiration of six months from the deceased's death, whichever first happens (F. A. 1894, s. 6 (7)). The original Inland Revenue Affidavit (*see* F. A. 1894, s. 22 (1) (*n*)) is that which leads to the grant of probate of the deceased's will or of letters of administration of his estate. The grant should therefore be taken out within six months of the death or within two months of the termination of any suit respecting the will or letters of administration which is not concluded within four months after the deceased's death (F. A. 1894, s. 8 (1), incorporating Stamp Act, 1815, s. 37).

The Estate Duty so far as not paid by the Executor, on the Inland Revenue Affidavit, is to be collected on an *account* giving particulars of the property and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow (F. A. 1894, s. 6 (4)).

Other Persons.

Where the Executor is not accountable for the duty in respect of property passing on the deceased's death, every person to whom the property passes for any beneficial interest

in possession, whether limited or absolute, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property or the management thereof is at any time vested and every person in whom the same is vested by alienation or other derivative title, is to be accountable to the Commissioners for the Estate Duty on the property and to deliver to them and verify an account of the property to the best of his knowledge and belief (F. A. 1894, s. 8 (4)).

This clause is very comprehensive, but it does not apply where the Executor is accountable, *i.e.*, to personal property of which the deceased was competent to dispose. An agent, bailiff, or steward who merely acts for another person in managing the property (*ibid.*, s. 8 (4) proviso) and a purchaser for value without notice (*ibid.*, s. 8 (18), would not be accountable under its provisions. But the following persons would be included: beneficiaries in possession, including life tenants and donees of gifts *inter vivos*, trustees, guardians, committees, and persons taking by alienation as volunteers. Purchasers for money or money's worth of land for which the Executor is now made accountable do not come within this clause, but the duty would still be a charge on the property unless it comes within the protection of L. P. A. 1925, s. 17 (1), or L. R. A. 1925, s. 73 (1), as to which *see infra*, pages 153-156.

Where property is held by trustees upon trusts for beneficiaries, the former are the persons primarily liable to render the accounts (*re* Orford; Cartwright *v.* Del Balzo, [1896] 1 Ch. 257). Moreover, the liability of beneficiaries is qualified so that they are only liable when the property passes to them for a beneficial interest in possession; but it is immaterial whether the interest is a limited one (as, for instance, for life) or an absolute one. Presumably the

accountability of beneficiaries is, however, confined to the share of property in which they take a beneficial interest. So that where a fund is divisible among several beneficiaries each of them would only be accountable for the Estate Duty on his own share.

Trustees and the other persons enumerated in the above provision are, it will be observed, only liable to the extent of the property actually received or disposed of by them. This, however, will include property which, but for their negligence, they might have received.

In the case of a gift made within three years of death the donee is liable to account for and pay the duty (*re* Crocker; Crocker *v.* Crocker, [1916] 1 Ch. 25). The Executors are under no liability beyond specifying particulars of the gift and the name and address of the donee.

A *donatio mortis causa* is also not property passing to the Executor as such, and if the Estate Duty is paid by him it is recoverable from the donee (*re* Hudson; Spencer *v.* Turner, [1911] 1 Ch. 206).

Persons who have purchased or acquired property which does not pass to the deceased's Executor as such are personally accountable under s. 8 (4) of the F. A. 1894 (except as regards land in the circumstances mentioned below, pages 153-156); and as will be seen below, Estate Duty in such cases is also made a charge upon the property itself.

A *bonâ fide* purchaser, for valuable consideration, without notice of the claim for duty is not, however, accountable for Estate Duty on the property purchased by him (F.A. 1894, s. 8 (18)). Nor would the duty form a charge on the property. But it should be noted that a person is considered to have notice of an instrument, fact, or thing if it is within his own knowledge or would have been if reasonable and proper enquiry had been made, or if in similar

circumstances in the same transaction, it has or would have come to the knowledge of his counsel, solicitor, or agent as such in the matter. On the other hand, he is not to be prejudicially affected by any instrument or matter capable of registration under the L. C. A. 1925, which is void or not enforceable as against him by reason of non-registration (L. P. A. 1925, s. 199).

Every person who is accountable for Estate Duty (including an Executor *de son tort;* A.-G. *v.* New York Breweries Co., [1899] A. C. 62), and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased or of the income of any part of such estate is, to the best of his knowledge and belief, if required by the Commissioners, to deliver and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate on which Estate Duty is leviable on the death of the deceased (F. A. 1894, s. 8 (5)). This provision applies both to accountable persons and to persons who have taken possession of property, and includes mortgagees in possession, executors *de son tort*, persons to whom the Commissioners believe gifts have been made within three years, etc. It also enables the Commissioners to obtain information from parties who may not be actually accountable for the Estate Duty.

It is presumed, however, that persons who were merely agents, such as bankers, solicitors, and the like, could not be called upon for an account as being persons who had taken possession of or administered the estate.

A person *wilfully* failing to comply with the above provisions of s. 8 of the F. A. 1894 becomes liable at the option of the Commissioners to a penalty of £100 or a sum

equal to double the Estate Duty (if any) remaining unpaid for which he is accountable (*see* sub-section 6). Sub-section 14 imposes a similar penalty where a person *wilfully* omits to verify an account or statement.

Every person who is made accountable for Estate Duty thereby becomes a debtor to the Crown for the duty, and his goods and estate are accordingly liable to satisfy the debt (F. A. 1894, s. 8 (1), incorporating S. D. A. 1853, s. 44, and *see* Berry *v.* Gaukroger, [1903] 2 Ch. 116). But in certain cases, as already indicated, further security for payment of the duty has been established by making it an actual charge on the property in respect of which it is payable. By this provision a proportion of the property belongs to the Crown as Estate Duty, so that even though the accountable party may dispose of the property it is still liable, and the owner can be restrained from parting with it until the duty is paid (F. A. 1894, s. 8 (13)), and the charge in favour of the Crown can be enforced by action (A.-G. *v.* Wack, *Times*, 14th June, 1909).

When Estate Duty a Charge.

Estate Duty is made a first charge on all property which does not pass to the Executor as such—that is, to the executor in his capacity as personal representative of the deceased person (F. A. 1894, s. 9 (1)).

Property passing to the Executor as such comprises the personal estate of the testator in Great Britain, including leasehold property (*re* Culverhouse ; Cook *v.* Culverhouse, [1896] 2 Ch. 251), and the Estate Duty thereon is payable out of the residuary personal estate. But it does not include personal property over which the deceased had and exercised a general power of appointment (*re* O'Grady ; O'Grady *v.* Wilmot, [1916] 2 A. C. 231), gifts *inter vivos* (*re* Crocker ; Crocker *v.* Crocker, [1916] 1 Ch. 25), *donationes*

mortis causa (*re* Hudson ; Spencer *v.* Turner, [1911] 1 Ch. 206), settled property on which Estate Duty becomes chargeable in consequence of the F. A. 1914, s. 14, a deposit in a savings bank payable to a nominee under a nomination made by the deceased, a deposit made in the joint names of deceased and another or others, property vested in the deceased and another person jointly and passing on deceased's death to the survivor, foreign moveable property (*re* Scull ; Scott *v.* Morris (1917), 118 L. T. 7), nor property passing under settlements made otherwise than by the will of deceased. Further, it does not include land which now devolves upon the personal representative, *see re* Palmer ; Palmer *v.* Rose-Innes, [1900] W. N. 9, in which Buckley, J., said "that the language of s. 9 (1) of the F. A. 1894, must be construed with reference to the law as it stood at that time and not in accordance with the provisions of the Land Transfer Act, 1897." The same argument applies to the new provisions, so that land devolving upon an Executor constitutes property not passing to the Executor as such within the meaning of s 9 (1), and it may be added that the A. E. A. 1925, under which real estate devolves on the personal representative, expressly provides (in s. 53 (3)) that nothing in that Act is to alter any death duty payable in respect of real estate or impose any new duty thereon, or alter the incidence of any death duties.

The Estate Duty on land so devolving and on the other properties mentioned above accordingly forms a charge upon and is payable out of the property itself, except that property in a British Possession (designated by Order in Council) is expressly exempted from any such charge while so situate (F. A. 1894, s. 20 (2)).

Estate Duty is also a charge on the proceeds of sale of timber (*re* Smyth ; Edwards *v.* Smyth, [1918] 1 Ch. 118), and on the proceeds of sale of chattels which have been exempted

from Estate Duty on national, scientific, historic or artistic grounds until sold (*re* Scott ; Scott *v.* Scott, [1916] 2 Ch. 268).

The charge of duty on land (in England and Wales) in favour of the Crown may now be registered as a land charge under the L. C. A. 1925, but it should be noted that the Act does not apply to registered land so far as the charge of duty can be protected by notice, &c., under the L. R. A. 1925 (L. C. A. 1925, s. 23, and *see* page 155, *infra*, dealing with such notices).

S. 10 (1) of the L. C. A. 1925 provides that any charge acquired by the Commissioners of Inland Revenue under any statutes passed or thereafter to be passed for death duties (on land) leviable or payable on any death occurring after that Act may be registered as a land charge (*see* Class D (1)). They are not entitled to do this until the duty has actually become a charge, and separate particulars of the duties and land affected are to be entered on the register (*ibid.*, sub-section 4), and the charge registered in the name of the estate owner (*ibid.*, sub-section 2). Such a land charge is void as against a purchaser for money or money's worth of a legal estate in the land, unless the land charge is registered in the appropriate register before the completion of the purchase (*ibid.*, s. 13 (2)). Further under s. 17, L. P. A. 1925, a purchaser takes free from the charge unless it is registered, or unless it attached before the 1st January, 1926, and the purchaser had notice.

Further consideration of the effect of the charge of Estate Duty on land is given on page 149, *infra*, under the heading "Land."

When the duty in respect of property upon which it is a charge has been paid, a certificate can be obtained from the Commissioners which is to be conclusive evidence that the duty is a first charge upon the property after the debts and incumbrances allowed in assessing the duty (F. A. 1894,

s. 9 (2)). Thus, where the duty has not been paid and is still outstanding, there is a charge on the property in favour of the Crown. Where, however, it has been paid, the person paying it is entitled to the charge. Application for the certificate should be made by the person paying the duty on the prescribed form (F. A. 1894, s. 8 (14)). giving a short description of the property and of the debts and incumbrances allowed in the assessment (*see also* page 214).

Where the Executor pays the duty in respect of any such property he can recover it from the trustees or owners, but in the case of real estate the duty may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are mentioned in the Act (F. A. 1894, s. 9 (4)).

An assent or conveyance by a personal representative is not, except in favour of a purchaser, to prejudice his or any other person's right to be indemnified against any duty, and the personal representative before assenting or conveying may require security for payment of such duty, but may not postpone giving an assent merely because duty is unpaid if reasonable arrangements for discharging the same have been made (A. E. A. 1925, s. 36 (9) and (10)).

For the purpose of paying the Estate Duty on property not passing to the Executor as such or of raising the amount when already paid, a power is given to any person authorised or required to pay the duty, of raising the amount of the duty, interest, and expenses (*see* Harris's Trustees *v.* Harris (1904), 41 S. L. R. 357, and *in re* MacKechnie (1898), 6 S. L. T. 242), by sale or mortgage or by creating a charge for a terminable period (F. A. 1894, s. 9 (5)). This power applies whether the property is vested in such person or not and there is no necessity to obtain the authority of the Court for the exercise of the power of sale (Orr-Ewing Petitioner, [1920] 1 S. L. T. 259).

Similarly, any person who has a limited interest in the property as, for instance, a life tenant of settled property and a tenant in tail who dies shortly after succeeding to the property without having disentailed (*re* Anson ; Buller *v.* Anson, [1915] 1 Ch. 52), and who pays the duty, is to be entitled to a like charge as if the Estate Duty had been raised by means of a mortgage to him (F. A. 1894, s. 9 (6) ; Lord Advocate *v.* Countess of Moray, [1905] A. C. 531 ; *re* Mexborough ; Savile *v.* Mexborough (1903), 88 L. T. 131). This provides for the case of a limited owner who pays the duty out of his own pocket. A tenant for life is not, however, entitled to a charge for interest on the duty, as he himself is bound to keep down the interest (*re* Earl Howe's Settled Estates ; Howe *v.* Kingscote, [1903] 2 Ch. 69). Nor is he entitled to charge the fee with the expenses of paying the duty or of the petition to the Court (*re* Laurie (1898), 25 Rett. 636). The charge simply extends to the duty itself.

Where the charge affects land in England and Wales, and arose after 1925, it may be registered as a land charge under L. C. A. 1925, s. 10 (1), class C (ii), which provides for the registration of a "limited owner's charge," viz., any equitable charge acquired by a tenant for life or statutory owner (for definition *see* S. L. A. 1925, s. 117 (1) (xxvi)) under the F. A. 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and special priority is given by the statutes to such charge. The charge is void against a purchaser of a legal estate for money or money's worth unless registered before completion of the purchase (L. C. A. 1925, s. 13 (2) and see also L. P. A. 1925, s. 17 (1)). The expenses of registration form part of the land charge (L. C. A. 1925, s. 12 (1)). It may be added that this Act does not apply to land charges affecting registered land which can be protected by notice under the L. R. A. 1925.

In the case of settled property, any money arising from the sale thereof or money held upon trust to lay out upon the trusts of a settlement or capital moneys arising under the Settled Land Acts may be expended in paying any Estate Duty in respect of property comprised in the settlement and held upon the same trusts (F. A. 1894, s. 9 (7), and *see re* Egmont's Settled Estates, Lefroy *v.* Egmont, [1912] 1 Ch. 251). As regards land in England and Wales, this provision is now superseded by L. P. A. 1925, s. 18 and L. R. A. 1925, s. 73, sub-sections 12 and 13 (as to death duties payable or leviable after the commencement of that Act, sub-section 16). S. 18 (1) of the first-mentioned Act provides that capital money liable to be laid out in the purchase of the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as land subject to a trust for sale may, by direction of the tenant for life, statutory owner or trustee for sale who is accountable, be applied in paying the duties and costs chargeable in respect of such land. The money may be similarly applied although the duty is only payable in respect of an interest in the land which is, or is capable of being, overreached by a conveyance to a purchaser, but in that case, if the duty would not otherwise be payable out of capital, repayment is to be made to the trustees of the settlement or trustees for sale by the like instalments and interest at which the duty might have been paid, and the interest of the person so liable to make repayment is to stand charged with such repayment. For example, *A* is tenant for life of settled land subject to an annuity in favour of *B* who dies in 1927. Estate Duty and Succession Duty then become payable. The Estate Duty is payable on so much of the settled property as is required to produce the annuity (F. A. 1894, s. 7 (7) (*b*)) and by direction of *A* is paid out of capital moneys subject to the same trust. But Succession Duty

is payable on the cesser of the annuity for *A's* life only, and under this provision, although in the first instance it may be paid out of capital money must be repaid by *A* to the trustees, but he may do so by instalments, even though the property is sold so that all instalments have to be paid to the Revenue in full under s. 17 (3) of the L. P. A. 1925. If, in consequence an excess of duty is paid as contemplated by the proviso to the last-mentioned sub-section (*see* hereon, page 154) the trustees of the settlement or trustees for sale are entitled to receive it.

Somewhat similar provisions as to registered land are contained in sub-sections 12 and 13 of s. 73 of L. R. A. 1925.

It should be noted that in both cases these provisions apply not only to capital moneys under the S. L. A. 1925, but also to personal estate devolving with land held on trust for sale.

Under the Trusts (Scotland) Act, 1921, a trustee having power to invest in real securities, unless expressly forbidden by the trust, has power to invest on any charge created for payment of Estate or other Government Duty under F. A. 1894 and F. A. 1910.

Where property, which does not pass to the Executor as such, passes to a person charged with a capital sum or rent charge or an annuity in favour of other persons, the whole Estate Duty is a charge on the property, and should be accounted for by the owner of it and not by the person entitled to the rent charge, etc. But it is provided in such cases that an amount equal to the proper rateable part of the Estate Duty may be recovered by the person who has rightfully paid the Estate Duty from the person entitled to the rent charge or capital sum (F. A. 1894, s. 14 (1)). This provision has been applied to a capital sum directed to be raised out of settled property (*re* Orford ; Cartwright *v.* Duc del Balzo, [1896] 1 Ch. 257), to a jointure (*re* Parker-Jervis ; Salt *v.* Locker, [1898] 2 Ch. 643) and to a capital

sum directed by the deceased in his lifetime to be raised on his death out of his real estate (*re* Hacket ; Hacket *v.* Gardiner, [1907] 1 Ch. 385) ; but it is not applicable where a contrary intention on the part of the testator or settlor is expressed or indicated, *e.g.*, where a jointure is made payable "without any deduction whatsoever except in respect of income tax" (*re* Parker-Jervis, above), or "free from all taxes and deductions except property tax and Legacy or Succession Duty" (*re* Fitzhardinge ; Fitzhardinge *v.* Jenkinson (1899), 80 L. T. 376), or where sums of a specified "clear amount or value" were appointed out of settled funds (*re* Coxwell's Trusts ; Kinloch-Cooke *v.* Public Trustee, [1910] 1 Ch. 63), or in similar circumstances where the term "net" sums "clear of all costs and expenses of raising the same" are used (*re* Grant ; Nevinson *v.* United Kingdom Temperance and Provident Institution, [1915] W. N. 88).

These expressions of "contrary intention" may be compared with the analogous case of intention that the duty on property which ordinarily bears its own burden, shall be paid out of residue. A direction to the executors to pay "my . . . duties," for instance, has been held to cover the Estate Duty on real property specifically devised (*In re* Pimm ; Sharpe *v.* Hodgson, [1904] 2 Ch. 345). But no such direction would, as against the Revenue, shift or affect the charge of the duty on the property.

The incidence of duty where a further Estate Duty becomes payable in consequence of F. A. 1914, s. 14, and the decisions thereon, are considered on page 145, *infra*.

It should be noted that the person from whom the proportion is recoverable is bound by the accounts and valuations of the property chargeable as settled between the party entitled to recover and the Commissioners (F. A. 1894, s. 14 (3)).

As an example of the incidence of the duty, suppose real estate worth £12,500 and producing £500 per annum passed, under the will of *A* who died in 1860, to *B* for life, and on his death a legacy of £1,000 is charged thereon in favour of *C*, and an annuity of £100 per annum in favour of *D*, and subject thereto the property is given to *E*. *B* dies in 1910. Estate Duty is payable by *E* at £5 per cent. on the full value of the property, viz. £12,500, without deduction for the £1,000 or the annuity. But *E* is entitled to recoupment from *C* and *D* of the proportions of the duty attributable to the benefits taken by them. Thus, *C* pays £50, *i.e.*, £5 per cent. on £1,000. The case of *D*, who is only entitled to £100 per annum for his life, is somewhat different, and *E* can only recover from him interest on the duty payable on so much of the real estate as is sufficient to produce the annuity. This "slice" of the estate would be $\frac{100}{500}$ of £12,500 = £2,500, and the duty thereon £125. During *D's* life *E* is therefore entitled to deduct interest on this sum of £125 from the annuity. If the duty has been raised by mortgage, the rate of interest would be that payable on the mortgage. If not, the rate of interest would be that at which a mortgage could be raised.

The method described above applies in the case of all sums payable out of the annual income of property. (*See also* page 107, *supra*). In exceptional cases, however, *e.g.*, where the estate consisted of freehold reversions shortly falling into possession and the capital value was thus much greater than an average number of years purchase of the annual value, the proportion of Estate Duty attributable to the rent-charge may be ascertained by capitalizing it as if it were a perpetual and adequately secured rent-charge (*re* Portman ; Portman *v.* Portman, [1924] 2 Ch. 6).

Any dispute between the parties themselves as to the proportion of Estate Duty to be borne by any property

or person may be determined on application to the High Court, or to the County Court where the amount in dispute is less than £50 (F. A. 1894, s. 14 (2)).

The charge of Estate Duty on real estate shifts from the property to the proceeds of sale in the following circumstances :—

(1) Where a sale of settled property is made by a tenant for life, as regards the Estate Duty payable on his death. In such cases the proceeds of sale would pass on such event.

(2) Where a sale of registered land is made by the personal representatives of the deceased owner, a *bonâ fide* registered purchaser is not affected by any claim for Estate Duty arising before 1926, which may be regarded as shifting to the sale moneys (Land Transfer Act, 1897, s. 13) and the personal representative is accountable for the duty. The same result follows in the case of claims for Estate Duty arising after 1925 (L. R. A. 1925, s. 73 (1)).

(3) Where prior to the death of a life tenant the property was subject to a trust for sale. In such case the property devolves as personal estate, though no sale may have been effected and the charge of Estate Duty (although it attaches to the property in its unsold state) shifts on a subsequent sale to the proceeds. Of course, if the property is sold during the life of the life tenant, whether under a trust or power, the charge of Estate Duty presumptively payable on his death would not affect the sold property but would attach to the proceeds of sale.

As regards sales of land which became liable to Estate Duty on a death after 1925, see pages 153 and 155 *infra*.

Estate Duty payable in consequence of the F. A. 1914, s. 14, forms a charge on the settled property, whether real or personal, in the absence of any direction in the will. The property does not pass to the Executor of deceased (viz., the deceased life tenant) as such. Where there is a direction in the will, the question as to whether it will cover a future Estate Duty chargeable in consequence of s. 14, or not, is a matter on which there have been somewhat conflicting decisions. The Court of Appeal has, however, decided that no general rule can be laid down, but that the question depends upon the terms of the will in each particular case (*re* Palmer ; Palmer *v.* Palmer, [1916] 2 Ch. 391). And in the case of *in re* Wedgwood ; Allen *v.* Public Trustee, [1921] 1 Ch. 601, followed by *re* Fenwick ; Lloyds Bank *v.* Fenwick, [1922] 2 Ch. 775 ; *re* Sutherland ; Chaplin *v.* Leveson-Gower, [1922] 2 Ch. 782 ; *re* Beecham ; Woolley *v.* Beecham, 68 S. J. 208, where the expression was to pay "all death duties of every kind on every part of my estate" ; and *re* Sarson ; Public Trustee *v.* Sarson, [1925] 1 Ch. 31 ; it was laid down that the natural time to ascertain the meaning of the words "free of all death duties" is when the legacies which are given free of all duties are paid or retained upon trust. If it is intended to prolong this date to that of payment or transfer to the ultimate beneficiary, words should be used clearly expressing that intention. Unless, therefore, the direction in the will is sufficiently wide or there is a clearly expressed intention that the ultimate beneficiaries of the settled legacy or property shall enjoy the benefits conferred on them without any diminution for Death Duties, the further Estate Duty falls on the settled legacy or property itself and not on the residuary estate. Assuming, however, that it is clear that the settled property is not to be liable for the further Estate Duty and it does not devolve as residue on the death of the life tenant (as in the

Scottish case of Dunn's Trustees *v.* Dunn, [1924] S. C. 613), the Executors must make provision on the testator's death for the future Estate Duty either by setting aside a sufficient sum or in some other way.

Limitation of Liability.

No person is liable for Estate Duty under a will or letters of administration after six years from the date of settlement of the account in respect of which duty is payable, provided such account was a full and true one and contained all material information (F. A. 1894, s. 8 (2), incorporating ss. 12 to 14 of Customs and Inland Revenue Act, 1889). An account is not deemed settled for this purpose until the time for payment of the duty thereon has arrived (F. A. 1894, s. 8 (2)). The Inland Revenue Affidavit is an account for this purpose. No trustee, Executor, or administrator is after the expiration of such six years to be liable for any such duty, provided it can be shown that the account rendered was correct to the best of his knowledge. The above provisions do not apply unless an account has been delivered (A.-G. *v.* Montefiore, 52nd Inland Revenue Report, page 85), and if there has been no delivery before all the duty has become payable there will be no relief from liability until an account has been delivered and six years have elapsed since the assessment of duty.

The expression "settlement of the account" does not involve the actual payment of the duty and where the duty is payable by instalments protection is afforded at the expiration of six years from the date when the last instalment fell due.

As regards liability under any document (other than a testamentary document admitted to probate), if an attested copy has been deposited with the Commissioners in accordance with the provisions of s. 13 of the Customs and Inland Revenue Act, 1889, no person is to be liable for Estate Duty thereunder after six years from the date of notice to the

Commissioners given in the prescribed form (as to which see below) that a claim has arisen (s. 8 (2) of the F. A. 1894, incorporating ss. 12 to 14 of the above Act). The six years commence to run, not, of course, from the date when the copy is deposited but from the date when notice is given in proper form of the fact which gives rise to an immediate claim for duty under the document.

If after the expiration of twenty years from a death upon which Estate Duty became leviable any such duty remains unpaid, the Commissioners may remit it and any interest thereon on application by the accountable parties (F. A. 1894, s. 8 (11), extended by F. A. 1907, s. 13). This provision, of course, applies whether an account has been rendered or not, and it is not compulsory upon the Commissioners. It applies to all death duties.

The Commissioners are also empowered to remit interest on duty at any time where the amount is so small as not to repay the expense and trouble of calculation and account (F. A. 1896, s. 18 (1)).

The limitation of liability after six years referred to above applies to beneficiaries and persons in a fiduciary position such as executors, trustees, etc.; but with regard to real estate it is provided that where there has been a sale for valuable consideration (which includes the consideration of marriage : *re* Donelan's Estate, [1902] 1 I. R. 109) or a mortgage, the purchaser or mortgagee is not to be liable for payment of Estate Duty after six years from the date of notice to the Commissioners of the fact that the beneficiary, or any person in his right, has become entitled to the property in possession or to the receipt of the income and profits thereof, or where there has been no such notice, after twelve years from the event which gave rise to an immediate claim for duty (F. A. 1894, s. 8 (2), incorporating ss. 12 to 14 of The Customs and Inland

Revenue Act, 1889). In the latter case it is immaterial that the purchaser or mortgagee had notice of the death giving rise to the claim for duty, and he is not concerned to see that the duty is paid out of the consideration for the sale or mortgage. The periods referred to in s. 12 of six years from the payment of any instalment or part of the duty and two years from the time for payment of the last instalment or part of duty do not appear to be capable of being applied to Estate Duty, which may be paid by eight yearly or sixteen half-yearly instalments.

As regards claims for Estate Duty arising on a death after 1925, a purchaser for money or money's worth of land in respect of which the charge of duty has not been registered as a land charge will not need to rely on the above provision as he will be protected by L. P. A. 1925, s. 17 (1), and L. R. A. 1925, s. 73 (1). *See* pages 153 and 155.

The liability of beneficiaries or any persons other than purchasers or mortgagees is not, of course, affected by the above provisions.

With regard to the notices and statements to be made, it is specially provided that all affidavits, accounts, certificates, statements, and forms used for Estate Duty purposes are to be in such form and to contain such particulars as may be prescribed, and if the Commissioners require, shall be in duplicate ; and accounts and statements shall be delivered and verified by oath and production of books and documents as required (F. A. 1894, s. 8 (14)). Any person wilfully failing to comply with this provision is liable to a penalty (F. A. 1894, s. 8 (14) and s. 8 (6) and *supra*, page 134).

Apart from the foregoing provisions there is no limit to the liability for Estate Duty (*see* A.-G. (Ireland) *v.* Lordan (1906), 40 I. L. T. 98), and it may be added that the duty payable by an accountable person is a Crown debt (F. A. 1894, s. 8 (1), incorporating S. D. A. 1853, s. 44), and in the

administration of his estate, if insolvent, is now payable in accordance with the rules in Pt. I of the First Schedule of the A. E. A. 1925, *i.e.*, funeral and testamentary and administration expenses have priority and subject thereto the debts are payable in accordance with the rules in force under the law of bankruptcy. The priority of the debt in cases of this kind as a Crown debt appears to have ceased (Bankruptcy Act, 1914, s. 151).

LAND.

It is desirable to give a separate account of the special provisions relating to the liability of land in England or Wales which came into force on the 1st January, 1926, and relate to claims for duty arising on deaths on or after that date. The general provisions as to death duties are contained in s. 16 of the L. P. A. 1925. S. 17 of that Act relates to unregistered land only. Corresponding provisions as to registered land only are contained in s. 73 of the L. R. A. 1925.

Executor.

Under the L. P. A. 1925, s. 16 (1), a personal representative is made accountable for all death duties which may become leviable and payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise. Special attention should be paid to the definitions of "Death Duties" (s. 205 (1) (iv)), *i.e.*, all duties payable on death and not merely Estate Duty; "land" (s. 205 (1) (ix)), *i.e.*, land of any tenure, mines and minerals and buildings, but not an undivided share in land; and "personal representative" (s. 205 (1) (xviii)), *i.e.*, executor or administrator and an executor *de son tort*.

As regards land devolving upon the personal representative, it is provided by s. 1 (1) of the A. E. A. 1925 (which save as expressly provided does not apply where the death

occurred before the 1st January, 1926 (s. 54)), that real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death and notwithstanding any testamentary disposition thereof devolve on the personal representative of the deceased as chattels real did before that Act. Such real estate includes the deceased's free real estate and also real estate over which the deceased had and exercised a general power of appointment (*ibid.*, s. 3 (2)), and entailed property disposed of under the testamentary power conferred by statute, *i.e.*, L. P. A. 1925, s. 176 (A. E. A. 1925, s. 3 (3)), but not a share of real estate held in joint tenancy (*ibid.*, s. 3 (4)). The personal representative is now therefore accountable for the death duties on such real estate under s. 16 (1) of the L. P. A. 1925. He is also similarly accountable for the duties on settled land devolving upon him. As to this, s. 7 (1) of the S. L. A. 1925 provides that on the death of a tenant for life, if the land remains settled land, his personal representatives hold it on trust to convey it by deed or assent to the succeeding life tenant, subject to satisfactory provision being made for any unpaid death duties, interest and costs (*ibid.*, s. 8 (3) (*b*)). *See also* sub-sections 5, 6 and 7 as to the manner in which security in respect of the duties may be taken. S. 87 of the L. R. A. 1925 makes somewhat similar provisions on the death of a proprietor of registered settled land, whether it is settled by his will or by an instrument taking effect on or previously to his death. Further, by s. 22 of A. E. A. 1925 provision is made for special Executors as regards settled land, which for that purpose means land vested in the deceased which was settled previously to his death and not by his will. Such special Executors are included in the definition of " personal representative " contained in the last-mentioned Act (s. 55 (1) (xi)).

As already mentioned, although the personal representatives are made accountable for the death duties on land, the Estate Duty is still a charge thereon under s. 9 (1) of the F. A. 1894, as the land does not constitute property passing to the Executor as such. *See re* Palmer ; Palmer *v.* Rose-Innes, [1900] W. N. 9.

The fact that the personal representative is accountable does not justify him in postponing the giving of an assent to any devise or devolution merely because Death Duty remains to be paid, if reasonable arrangements for discharging it have been made. He has only to be satisfied that it will be paid. (*See* A. E. A. 1925, s. 36 (10) and Note at end of the 1st Schedule, Form No. 5, S. L. A. 1925).

Estate Owner.

In every other case the estate owner, who is defined as the owner of a legal estate (L. P. A. 1925, s. 205 (1) (v)), is made accountable for the death duties on land (including a share of land held in joint tenancy), and this liability covers not only his estate in the land, but also any interest therein which he can over-reach by a conveyance under the S. L. A. 1925, or under a trust for sale (L. P. A. 1925, s. 16 (2)). Thus on the death of *A* a jointure of £1,000 per annum becomes payable to *B*, and subject thereto the settled estates pass to *C* for life. *C* is accountable for the duties on the settled estates and on the jointure, but will be entitled to reimbursement in respect of the proportion attributable to the jointure. *See* page 141 as to Estate Duty, and sub-section 5 of s. 16, *infra.*

A purchaser for money or money's worth who has acquired a legal estate after the charge for duties has attached and free from such charge is specially excepted from accountability under this sub-section (*ibid.*, s. 16 (2)).

For the purpose of raising the duty and costs the persons so made accountable are to have all the powers which are by

any statute conferred for raising the duty (*ibid.*, s. 16 (3)). These powers have already been referred to ; *see* pages 131 and 138.

S. 16 (4) specially provides that nothing in that Act is to alter any duty payable in respect of land or affect the remedies of the Commissioners against any person other than a purchaser or person deriving title under him. Similarly s. 53 (3) of the A. E. A. 1925 provides that nothing in that Act shall (*a*) alter any death duty payable in respect of real estate or impose any new duty thereon, (*b*) render any real estate liable to Legacy Duty, or exempt it from Succession Duty, or (*c*) alter the incidence of any death duties.

Although the duties are made payable by the personal representatives or estate owner, the liability of the beneficiaries or their respective interests to account for or repay the duty, interest and costs to the Commissioners or to the personal representatives or estate owner, as the case may require, is unaffected (*ibid.*, s. 16 (5)). For example, *A* by will gives real estate to *B*, subject to an annuity to *C* and a capital sum to *D*. Assuming the personal representatives of *A* pay the Estate Duty on the whole real estate (without deduction), they would be entitled to recoupment from *B*, *C* and *D* for the proportions of duty attributable to their respective interests, but the beneficiaries *B* and *C* would be entitled to pay by instalments (F. A. 1894, s. 9 (4)). If the duty were not paid by the personal representatives, *B* would be accountable but would be entitled to recover from *C* and *D* the proportions of duty attributable to their respective interests (F. A. 1894, s. 14 (1), and *see* page 141, *supra*).

No accountable person in a fiduciary position is to be liable under the L. P. A. 1925 for duty in excess of the assets (including land) vested in him, or in the trustees of the settlement, which may or should be available for payment

of duty. Further, the Act is not to impose any charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage (L. P. A. 1925, s. 16 (6)).

As regards land held under tenancy in common and land held in joint tenancy, it would seem that the former, not being included in the definition of "land" and being subject to a trust for sale, devolves on the executor as personal estate and he is accountable for Estate Duty accordingly ; but land held in joint tenancy, though included in the term "land," does not devolve upon the executor and he is not therefore, as such, accountable, but an estate owner or registered proprietor is accountable.

Alienation.

S. 17 deals with the incidence of the duties in the event of a sale, exchange or legal mortgage of *unregistered* land which is, immediately before the transaction subject to a charge for death duties.

Sub-section 1 provides that a purchaser of a legal estate takes free from the charge (*a*) unless it is registered as a land charge or (*b*) unless it attached before the commencement of the Act, and the purchaser had notice. (As to notice, *see* page 133.)

In this connection the definition of "purchaser" in s. 205 (1) (xxi) is important. It must be a person who acquires an interest or charge for money or money's worth.

The provisions as to registration of a land charge have been dealt with on page 137, *supra*. Where the charge is not registered as a land charge, the person conveying, and the proceeds of sale, etc., derived from the conveyance is, and are, to remain liable and stand charged with payment of the duties so overreached together with interest thereon (*ibid.*, s. 17 (2)).

If such duties are payable by instalments and a sale, exchange or mortgage is made, all instalments unpaid then become payable with interest at £4 per cent. from the date of the transaction, and if in consequence a greater sum is paid or payable for duties and interest the excess is to be repaid or allowed by the Commissioners of Inland Revenue (*ibid.*, s. 17 (3)).

Subject as above every conveyance is to take effect subject to the charge for duties, even though it has not been registered as a land charge (*ibid.*, s. 17 (4)).

An illustration of the provision for repayment of excess duty is afforded by the case of Succession Duty being paid by instalments by a life tenant in respect of his life interest. After say, two instalments have fallen due, the property is sold and the remaining instalments become payable forthwith. If then, before the third instalment would have fallen due if there had been no sale, the life tenant dies, the third and fourth instalments are repayable. If the duty was originally paid out of capital money the trustee would be entitled to receive the repayment (*ibid.*, s. 18 (2) (*c*)).

Registered land.

As regards registered land somewhat similar provisions as to liability for death duties which became leviable or payable on or after 1st January, 1926, are contained in L. R. A. 1925, s. 73. Thus a personal representative in whom a registered estate vests on a death is made accountable (*ibid.*, sub-section 3), and in every other case the proprietor of a registered estate (not including a purchaser for money or money's worth) is accountable not only in respect of that estate but also in respect of any minor interest which he can over-ride (*ibid.*, sub-section 4).

For the purpose of raising the duty and costs these persons are to have all the existing powers in that respect

(*ibid.*, sub-section 10), and the liability of the beneficiaries or of their minor interests is not to be affected nor are the remedies of the Commissioners against any person other than a purchaser (*ibid.*, sub-section 11).

The liability of a personal representative, trustee, or other person in a fiduciary position is not to exceed the assets (including real estate) vested in him or the trustee of the settlement and available for payment of duty, or impose any liability on the proprietor of a registered charge which has priority to the claim for duty (*ibid.*, sub-section 14).

As regards the charge of duty it is provided that on the death of a proprietor, if it appears to the registrar that a charge has arisen he is to enter notice on the register (*ibid.*, sub-section 7), and before registering any over-riding disposition he is required to give notice to the Commissioners—after which he must cancel the notice (*ibid.*, sub-section 8).

He must also cancel it when the Commissioners notify him (as they are required to do) that (*a*) all claims for duties have been satisfied, (*b*) no such claims arise, or (*c*) they are satisfied that the duties will be paid or commuted (*ibid.*, sub-section 9).

As regards purchasers of registered land, it should be noted that for the purpose of this section, only purchasers for money or money's worth are referred to (*ibid.*, sub-section 15). It is provided by sub-section 1 that a registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all death duties, notwithstanding that notice of a claim for duties has been entered on the register.

A provision similar to that noted in respect of unregistered land is made for payment of all instalments of

duty on a sale, exchange or charge which would over-ride the charge of duty and any excess of duty which is in consequence paid is to be repaid or allowed by the Commissioners (*ibid.*, sub-section 6).

A disposition to any person other than a purchaser takes effect subject to the charge for duties whether notice of the claim is entered on the register or not (*ibid.*, sub-section 2).

The result of the above duplicate provisions, so far as a purchaser of land for money or money's worth is concerned, would seem to be that in the case of registered land he is not concerned to enquire as to claims for Estate Duty arising after 1925, but in the case of unregistered land, if on making search in the Land Charges Registry he finds a charge registered by the Commissioners, he should either require it to be removed before completion or call for a certificate under L. P. A. 1925, s. 16 (7), as this certificate is, under that sub-section, a sufficient authority to the registrar to enable him to cancel the land charge. *See also* page 157, *infra*. If, however, no land charge is registered, no further enquiry as to claims for Estate Duty arising on deaths on or after 1st January, 1926, need be made.

It may be added that the Settled Land, Law of Property, Land Registration, Land Charges and Administration of Estates Acts, 1925, extend to England and Wales only, and have therefore no application to land in Scotland or to the administration or devolution of the personal estate of a person domiciled in that country.

Certificates of Discharge.

In certain cases the Commissioners are empowered or required, where Estate Duty is paid, to grant certificates of discharge, for which no fee is to be paid (F. A. 1894, s. 8 (15)). Thus, in the case of property on which the

Estate Duty is a charge, application on the proper form giving particulars of the property, should be made by the person paying the duty (F. A. 1894, s. 11 (1)). A certificate is then endorsed thereon which releases *the property* from the charge of Estate Duty. It should be noted that the certificate only discharges the property and not the person paying the duty, so that if it afterwards appears that further duty should have been paid, the accountable party would still be liable, but the additional duty would not in these circumstances be a charge on the property. On a sale taking place the certificate can be granted not only where the Commissioners are satisfied that the full duty has been paid, but also if they are satisfied that it *will be* paid, as, for instance, where the value for Estate Duty has not been finally settled and the accountable parties give an undertaking or security for payment of the duty or for adjustment of the duty should the value on which it has been already paid be altered.

In the case of claims for duty in respect of land in England or Wales arising after 1925, the L. P. A. 1925, s. 16 (7), provides for a discharge of the land from all death duties on the Commissioners being satisfied that the personal representative or other person accountable has paid or commuted, or will pay or commute, such duties. The application should be made by the accountable party and the production of the certificate is a sufficient authority to the Land Registrar to cancel any land charge registered in respect of the duty. It should be noted that the Act refers to all death duties, and therefore, where Succession Duty would be a charge on the property as well as Estate Duty, that duty should also be paid before the certificate is applied for.

It should be borne in mind that the Executor is accountable for the Estate Duty on the leasehold property forming part of the deceased's free estate and that the duty does not

constitute a charge thereon (*re* Culverhouse; Cook *v.* Culverhouse, [1896] 2 Ch. 251). Further, the L. P. A. 1925, s. 16 (6), expressly declares that nothing in that Act is to impose a charge for duties on leasehold land. Certificates discharging the property from Estate Duty are not therefore applicable in the case of such leaseholds, unless they are settled by the will and become again liable to Estate Duty on the death of a life tenant in consequence of s. 14 of the F. A. 1914, in which case the duty would be a charge on the property.

As regards registered land, under the Land Transfer Act, 1897, s. 13, and Rules 208, 209, 210 and 211, notice of liability to duty had in certain cases to be entered in the charges register, and to prevent this entry or to cancel it when made a certificate from the Commissioners that the land might be registered without notice of any liability to death duty by reason of the death of the deceased, and that any such notice might be cancelled, was required. As regards claims arising after 1925 in respect of registered land, somewhat similar provisions are contained in L. R. A. 1925, s. 73 (7), (8) and (9), as noted *supra*, page 155; *see also* Rules 191, 192 and 193 under that Act.

Where a person is accountable for the Estate Duty in respect of any property passing, he may, after two years from the death of the deceased, apply to the Commissioners, at the same time delivering to them and verifying a full statement to the best of his knowledge of all property passing and the several persons entitled thereto. The Commissioners will then determine the rate of Estate Duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate the property and also the applicant, so far as regards that property, are to be discharged from any further claim for duty, and the Commissioners are required

to give a certificate of such discharge (F. A. 1894, s. 11 (2), as amended by F. A. 1907, s. 14). The certificate may be given before the two years have expired if the Commissioners have no reason to believe that any circumstances may come to light which would alter the rate and amount of duty. This certificate is not limited to property on which the Estate Duty is a charge and it discharges both the property and the person paying the duty. For example : if real property passes under the will of *A* to *B*, and for some reason the executors of *A* neglected or delayed proving his will, it might be somewhat difficult for *B*, who is accountable for Estate Duty on the real estate, satisfactorily to dispose of his liability. Under this provision, however, he can after two years, on delivering a full statement to the best of his knowledge of all property passing, make an application to the Commissioners, who will then determine the rate, and on payment of the duty on the property for which *B* is accountable, give a certificate of discharge which releases him and the property from further liability.

The Commissioners are empowered, upon the application of a person entitled to an interest in expectancy, to commute the Estate Duty which would become payable in respect of such interest, and accept a certain sum of money down (*see* pages 121 and 211 and F. A. 1894, s. 12). On the receipt of this sum the Commissioners are to give a certificate of discharge, which is written upon the back of the receipted account.

Further, in certain circumstances, the Commissioners are empowered to compound the death duties by a single payment where, owing to the number of deaths or the complicated nature of the interests of different persons, it is difficult or unduly costly to ascertain the exact amount of the duties payable. In such cases also, they are bound to give a certificate of discharge. This provision applies

to Legacy Duty and Succession Duty as well as to Estate Duty (F. A. 1894, s. 13 (1)).

In all these cases it should be noted that the Commissioners' certificate will not discharge any person (except a *bonâ fide* purchaser for value without notice: F. A. 1894, s. 11 (4)) from duty where it has been obtained by fraud or failure to disclose material facts (F. A. 1894, s. 11 (3) and s. 13 (3)). Nor will it affect the rate of duty on any other property which is afterwards shown to have passed on the death (F. A. 1894, s. 13 (3)).

Further particulars as to the practice relating to these certificates and other assurances given by the Commissioners are given on page 213, *infra*.

No proceedings may be taken by the Commissioners in a British Possession (designated by Order in Council, *see* page 109), for recovery of Estate Duty, nor is Estate Duty to constitute a charge on any property in such a possession while so situate (F. A. 1894, s. 20 (2)). As already pointed out, however, the English executor is accountable for the Estate Duty on moveable property outside Great Britain, and presumably if the situation of the property changed so that it was no longer in a British Possession to which this provision refers, it would become subject to a charge for any unpaid Estate Duty.

Any person aggrieved by the decision of the Commissioners as to repayment of overpaid duty, or by the amount of duty claimed, may on payment of the duty or giving security as directed by the Court, appeal to the High Court, or to the County Court where the value of the property does not exceed £10,000 (F. A. 1894, s. 10). This provision does not apply where the question in dispute is the value of any real or leasehold property (F. A. 1910, s. 60 (3)). In such cases the appeal is made under the provisions of the F. A. 1910.

CHAPTER IV.

EXEMPTIONS FROM ESTATE DUTY AND ALLOWANCES.

MOST of the exemptions from Estate Duty have been already dealt with, and reference is made below to the pages where they are more fully discussed.

(1) Certain gifts *inter vivos*.

(2) Settled property upon which Probate Duty or Account Duty was paid on death of deceased's spouse.

(3) Immoveable property situate out of Great Britain.

(4) Moveable property so situate where the deceased owner died domiciled out of Great Britain.

(5) Property held by the deceased as the holder of an office or as the recipient of charity or as a corporation sole.

(6) Property passing by reason of a sale or lease for full money consideration.

(7) Property held by the deceased merely as trustee.

(8) Settled property upon which Estate Duty was paid on death of deceased's spouse.

(9) The property of common seamen, marines, soldiers or airmen who are killed or die in His Majesty's service.

(10) The estate of a soldier (officer or man) who is killed or dies on service, provided it does not exceed £5,000 and so far as it is given to his widow and children.

(11) Extension of above remission in the case of deaths during the Great War and subsequently.

(12) Estate not exceeding £100 in value.

(13) Works of art, etc., given for national purposes, upon which the Treasury has remitted the duty.

(14) Similar articles which appear to the Treasury to be of national, scientific, historic, or artistic interest, until sold, unless the sale is made to the excepted bodies mentioned on page 79, in which case absolute exemption is given.

(15) Pensions and annuities granted by the British and Indian Governments to the widows and children of deceased officers.

(16) Advowsons and Church patronage.

(17) A single annuity not exceeding £25 purchased or provided by the deceased.

(18) Interests in expectancy sold or mortgaged for full consideration in money before the passing of the Finance Act or Acts under which the Estate Duty is chargeable.

(19) Property settled by a husband or wife before the passing of the F. A. 1894, where the income was enjoyed by the deceased spouse and the property then accrues to the settlor for life. Here the payment of Estate Duty is postponed until the death of the settlor.

(20) Enlargement of interest in property which would otherwise have passed (*see* page 58).

(21) Reverter to the disponer of property which would otherwise have passed (*see* page 59).

(22) Real estate to the rents of which the deceased was entitled in right of his wife (F. A. 1896, s. 15 (4)).

(23) Timber, until sold.

(24) War securities held by foreigners.

(25) Allowances against Estate Duty.

1. Absolute gifts made during the lifetime of the deceased more than three years before his death are not liable to Estate Duty (*see* F. A. 1910, s. 59). Nor are gifts made within that period in consideration of marriage (*ibid.*), nor small sums not exceeding £100 for any one donee (*ibid.*), nor gifts which are part of the reasonable and normal expenditure of the deceased (*ibid.*), nor gifts for public or charitable purposes made more than one year before death (*ibid*). Gifts made more than three years, in which a benefit is reserved to the donor, are also exempt if the benefit is not legally enforceable (A.-G. *v.* Seccombe, [1911] 2 K. B. 688) or if it is released more than three years before death (*see* F. A. 1900, s. 11 (1), as amended by F. A. 1910, s. 59 (1) and (3)). *See also* pages 23-34.

2. Where personal property passes under a disposition made by a person dying before the F. A. 1894, and Probate Duty or Account Duty has been paid or is payable in connection with the settlor's death, Estate Duty is not payable on the death of a life tenant who was the husband or wife of the settlor unless he or she was competent to dispose (F. A. 1894, s. 21 (1), as amended by F. A. 1914, s. 14). Formerly settled personal property which had borne Probate Duty or Account Duty in connection with the death of the settlor before the F. A. 1894, was in no case liable to Estate Duty on the death of a life tenant after that Act, but this exemption was limited, as stated above, by the F. A. 1914. *See also* page 67.

3. Immoveable property outside Great Britain is not liable to Estate Duty unless it forms part of the assets of an English partnership or is subject to a trust for sale and vested in English trustees under an English settlement in

English form (*see* F. A. 1894, s. 2 (2) and A.-G. *v.* Johnson and Others, [1907] 2 K. B. 885 ; *see also* pages 8-11).

4. Moveable property so situate is not liable if the deceased died domiciled abroad (*see* F. A. 1894, s. 2 (2)). Where it is settled and passes on the death of a limited owner it is also exempt unless it is vested in trustees resident here under a settlement made in English form (A.-G. *v.* Jewish Colonization Association, [1901] 1 K. B. 123 ; *see also* pages 8-11).

5. Property in which the deceased was interested only as holder of an office, the recipient of charity, or as a corporation sole (F. A. 1894, s. 2 (1) (*b*))—for instance, if the deceased were fellow of a college, or if he were the occupant of an almshouse or in receipt of a charitable pension. Also the benefices of all clergy. Where the deceased was a workman or servant and as the result of a fatal accident compensation became payable to his family Estate Duty would not be payable in respect of such compensation.

Where the deceased is trustee of property under a deed and receives an annual sum for carrying out the duties of the office, Estate Duty is not payable on his death on the cesser of such annual sum, as he is considered to be entitled merely as the holder of an office (A.-G. *v.* Eyres and Others, [1909] 1 K. B. 723).

See also page 55.

6. In the case of a *bonâ fide* sale or lease for full consideration in money or money's worth, Estate Duty is not payable on the death of the deceased (F. A. 1894, s. 3 (1)) : thus, if *A*, who is possessed of cottage property which is troublesome to manage, arranges with *B* to sell it to him for an annuity, no Estate Duty would be payable on the cesser of the annuity on *A's* death. If, however, the transaction were in the nature of a gift by *A* to *B*, Estate Duty would be payable (*see* pages 23 to 24). But where the

transaction is merely a change of security, Estate Duty would be chargeable (A.-G. *v.* Smith-Marriott, [1899] 2 Q. B. 595). For instance, suppose *A* is entitled under a settlement to a jointure charged on one estate which the owner desires to sell free from the jointure. In consideration of the jointure being secured on another estate, *A* releases her jointure, which is thereupon charged substitutively on the other estate. Estate Duty is nevertheless payable on *A's* death on the cesser of her jointure as the effect of the transaction was merely to change the security. *See also* page 54.

7. Trust property. This exemption covers trust property under dispositions not made by the deceased and under those made by him (F. A. 1894, s. 2 (3), as amended by F. A. 1910, s. 59 (1)). In the case of dispositions not made by the deceased under which he was merely trustee Estate Duty is obviously not payable, as he held the property as trustee and had no beneficial interest. In the case of dispositions made by him under which he was merely trustee, no Estate Duty is payable unless the disposition takes effect as a gift within three years or a gift with reservation (*see* " Gifts inter Vivos ", page 23).

8. Settled property upon which Estate Duty has once been paid in connection with the death of one party to a marriage is not again liable to Estate Duty on the death of the other party to the marriage, who was merely life tenant and not competent to dispose (F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13, and F. A. 1914, s. 14). Formerly one payment of Estate Duty in respect of settled property covered all subsequent deaths of limited owners, and this exemption was continued in respect of the Estate Duty otherwise payable in consequence of the F. A. 1914, s. 14, on the death of a life tenant who surrendered his life interest and died within three years, provided the surrender took place between the 15th August, 1914, and the 1st April,

1915 (F. A. 1914, s. 14, proviso (*c*)). It should be noted that although small estates not exceeding £1,000 settled by the will of the deceased were exempt from Settlement Estate Duty they are not exempted from the further Estate Duty payable on successive deaths of life tenants in consequence of the F. A. 1914, s. 14.

Where the interest of any person in settled property fails or determines by reason of his death before it becomes an interest in possession and subsequent limitations under the settlement continue to subsist, Estate Duty is not payable (F. A. 1894, s. 5 (3); A.-G. *v.* Wood, [1897] 2 Q. B. 102; A.-G. *v.* Glossop, [1907] 1 K. B. 163).

Land and chattels settled by Act of Parliament or Royal Charter so as to be inalienable do not come within the exemption conferred on settled property, and Estate Duty is payable by way of life interest on each death (F. A. 1894, s. 5 (5)).

See also pages 55-57.

9. The property of a common seaman, marine, or soldier, including an airman (Air Force (Constitution) Act, 1917, and enactments applied thereunder) who shall be slain or die in the service of His Majesty, whether on active service or not, is not liable to Estate Duty (F. A. 1894, s. 8 (1)). And no other duties, from which the estate would have been exempted if Estate Duty had actually been paid, are claimed. Thus, if the estate does not exceed £1,000, Legacy Duty and Succession Duty are not chargeable nor would they be chargeable if the estate exceeded £1,000, but did not exceed £15,000, and the beneficiaries were lineal issue or lineal ancestors of the deceased. The exemption does not apply to settled property in which the deceased had a life interest only. The term "common seamen, marines, soldiers or airmen" includes seamen not above the rank of Chief Petty Officer, marines not above the rank of sergeant

and soldiers or airmen not above the rank of corporal or lance-sergeant.

10. A further extension of the above exemption was made in connection with the Boer War. As now constituted, this exemption provides that where any person dies from wounds inflicted, accident occurring, or disease contracted within twelve months before death while on active service against an enemy, whether on sea or land or by air, and such person was at the time either subject to the Naval Discipline Act (*see* Naval Discipline Acts, 1866 and 1909) or subject to military law or to the Air Force Act, whether as an officer, non-commissioned officer, soldier or airman under Part V of The Army Act or The Air Force Act (*see* Army (Annual) Act and Air Force (Constitution) Act, 1917, and enactments applied thereunder), the Treasury may, if they think fit, on the recommendation of the Secretary of State (including the President of the Air Council) or of the Admiralty, remit, up to an amount not exceeding £150 in any one case, the whole or any part of the death duties leviable in respect of property passing to the widow or lineal descendants, if the total value for Estate Duty of the property so passing does not exceed £5,000 (F. A. 1900, s. 14, as extended by The Air Force (Constitution) Act, 1917).

It will be noted that this provision only applies where the death occurred on, or in consequence of, active service against an enemy and then only if the estate passes to the widow or lineal issue of the deceased and does not exceed £5,000. It applies to all death duties and not merely to Estate Duty (*ibid*, and *see* F. A. 1894, s. 13 (3)), but the amount remitted must not exceed £150 in any one case.

11. The above provision was further extended by The Death Duties (Killed in War) Act, 1914, in the case of

persons killed in the Great War. This extension only related to the war in question (which officially terminated on the 31st August, 1921, except as to Turkey, where the date was 6th August, 1924), and applied to all persons in H.M. Naval (*see* Naval Discipline Acts, 1866 and 1909), Military (*see* Army (Annual) Act), and Air (Air Force (Constitution) Act, 1917, and enactments applied thereunder) Forces, whether serving in this country or abroad, or with the Allied Forces; combatants of the latter Forces (as to property in the United Kingdom), where reciprocal concessions were granted by the country to which they belonged; H.M. Army nurses and also members of the Voluntary Aid Detachment and of the British Red Cross Society when under military law; also to the master or members of the crew of a ship or fishing boat dying from causes arising out of the operations of the war (F. A. 1917, s. 29). The period and conditions in which death must have occurred were extended by s. 31 of the F. A. 1919, and this extension was made retrospective so that the remission may be applied where the deceased died from wounds inflicted, accident occurring or disease contracted, within three years (originally the period was twelve months) before death while on active service against an enemy, including wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the war, but after its termination. The following points may be noted:—

(*a*) The remission extended to lineal ancestors as well as to the widow and lineal descendants (Death Duties (Killed in War) Act, 1914, s. 1 (1)) and also to brothers and sisters and the descendants of brothers and sisters. (The extension, with retrospective effect, to brothers and sisters and their descendants was made by F. A. 1918, s. 44.)

(*b*) It extended to the whole of the duties leviable on property passing under any title to those persons where the value for Estate Duty of the property so passing did not exceed £5,000.

(*c*) Where the value for Estate Duty of the property passing to such persons exceeded £5,000, the remission extended to the whole of the Death Duties on the first £5,000, and the duties on the remainder of the property were discounted (according to the Tables of Mortality of Government Life Annuitants, 1912) for the period the deceased would have lived if he had enjoyed the normal expectation of life (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*b*)).

(*d*) The benefits of the relief given in respect of the first £5,000 were rateably apportioned among the persons who would otherwise bear the duties remitted according to the amounts they would so bear and without regard to their respective rights of priority (*ibid.*, s. 1 (2)). If property passed under several titles to beneficiaries entitled to remission, the first £5,000 was rateably apportioned between the different properties.

(*e*) Where the relief *in respect of Estate Duty* obtained under this section was less than that which might have been obtained under s. 15 of the F. A. 1914 (which provides for discount in the case of land or a business where a second death occurs within five years, *see* page 117), the relief was to be under the last mentioned section only. In other cases s. 15 was not to apply to any Estate Duty to which the special relief on deaths occurring during the war applied (Death Duties (Killed in War) Act, 1914, s. 1 (3)). It should be noted that

this provision only related to Estate Duty, so that in an appropriate case relief from Estate Duty might have been claimed under s. 15 of the F. A. 1914, and relief from any other duties under the section now being considered.

(*f*) The first £5,000 on which all duties were remitted was not subject to aggregation.

(*g*) Where the estate was entitled to any allowance of Colonial duty under s. 20, F. A. 1894, of Legacy Duty under s. 21, F. A. 1896, or of Settlement Estate Duty under s. 14 (*b*), F. A. 1914, the Estate Duty had first to be discounted under the Killed in War Act, and the allowance of any of the above duties then made against the Estate Duty as so discounted.

In addition to the above, provision was also made for remission of all duties in respect of any property passing more than once owing to deaths caused by the war (Death Duties (Killed in War) Act, 1914, s. 2). The intention was to provide that where an estate passed more than once owing to the accident of war, duty should only be charged in connection with the first death, and that irrespective of the person to whom the estate passed. This provision originally only applied to Estate Duty, but was extended with retrospective effect to Succession and Legacy Duty as well (F. (No. 2) A. 1915, s. 46). The property on which duty was remitted on the second death was not liable to aggregation with any other property then passing (Death Duties (Killed in War) Act, 1914, s. 2 (1)). The relationship of the person to whom it passed on the second death was immaterial for the purpose of this remission.

It may be added that by F. A. 1921, s. 43, the provisions relating to persons killed in the Great War were extended to the members of any of His Majesty's forces, judges,

magistrates, members of any police force in Ireland (including special constables), and members of His Majesty's Civil Service, serving in Ireland who die after the 31st December, 1918, from causes arising directly out of "the present state of disorder in Ireland." These particular remissions are to continue until such dates as may be fixed by Order in Council.

Further by F. A. 1924, s. 38, the temporary provisions relating to persons killed in the Great War, but not including s. 2 of the Death Duties (Killed in War) Act, 1914, were extended to members of His Majesty's forces who are subject either to the Naval Discipline Act or to military law, whether as officers, non-commissioned officers, or soldiers under Part V of the Army Act, or to the Air Force Act, and who die after 31st August, 1921 (*see* page 167), from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy, or on service which is of a warlike nature, or which, in the opinion of the Treasury, otherwise involves the same risks as active service. This extension is general in character and not limited to any particular war or period. The relief is also made applicable in the case of service of a warlike nature or service which the Treasury consider involves the same risks as active service.

12. Where the property passing does not exceed £100 no Estate Duty is payable, as no rate of duty is provided. This is so even where there is other property passing, so long as either the property not exceeding £100 or the other property is expressly exempted from aggregation.

In cases where the deceased's estate comprised a deposit in the Post Office Savings Bank or in a Friendly Society, and in certain cases of the effects of seamen and soldiers dying on active service, and the pay or pension of soldiers, sailors, civil servants, school teachers, police and others,

the property can be obtained without a grant of probate or letters of administration where the amount does not exceed £100 (*see* page 217 and F. A. 1894, s. 8 (1); and for a complete list of the statutes enabling this to be done, *see* British Death Duty Acts, 1796-1924 (issued by the Stationery Office), page 263. In all other cases, whether the property exceeds £100 (net) or not, a grant of representation is in strictness necessary (Revenue Act, 1884, s. 11, as amended by Revenue Act, 1889, s. 19).

13. As already shown, the Treasury may remit the Estate Duty (or any other duty) in respect of such pictures, prints, books, manuscripts, works of art, or scientific collections as appear to them to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes or to any university or to any county council or municipal corporation (F. A. 1894, s. 15 (2)). Application should be made to the Estate Duty Office, accompanied by an inventory and valuation of the articles and a statement giving particulars of the corporation, etc., to which they are given and of the grounds on which it is contended that they come within the exemption. A letter of acceptance of the gift should also be furnished. *See also* page. 92.

14. Articles as above and other things not yielding income which appear to the Treasury to be of national, scientific, historic, or artistic interest are exempted from Estate Duty while enjoyed in kind, but Estate Duty is to be paid if and when they are sold, unless the sale is made to the excepted bodies specified on page 79, *supra* (F. A. 1896, s. 20, as amended by F. A. 1910, ss. 63 and 96, and F. A. 1921, s. 44). This exemption applies whether the articles are settled or not. On a sale taking place, the person selling or for whose benefit the sale is made is accountable for the duty and is to deliver an account within one month of sale.

(*See also* page 79.) The duty is payable by reference to the last death on which the property passed. Application should be made to the Estate Duty Office and should contain a valuation and inventory of the property and particulars showing the grounds on which it is considered they are entitled to exemption and stating where they may be seen. Broadly speaking, the exemption is intended to apply not to collections as a whole but to particular works of art which are of such national, scientific, historic, or artistic interest that they would be purchased or accepted as a gift or bequest by one of the national collections. *See* also page 92.

15. Pensions or annuities payable by the Government of India to the widow or child of any deceased officer of such Government are exempted from Estate Duty even though the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid (F. A. 1894, s. 15 (3)). This exemption also applies to such pensions granted by a provincial government in India, even where the contribution of the deceased is made voluntarily. Similarly, compassionate allowances and pensions granted by the British Government to the widow or children of a member of the combatant services are not liable to Estate Duty, but the gratuity payable under Article 497 of the Royal Warrant for pay and promotion to the representatives of a deceased officer forms part of his estate and is liable to duty. No death duties are payable in respect of gratuities granted by the British Government to the representatives of deceased civil servants (other than school teachers under the Superannuation Acts, 1909 to 1914. No duties are claimed in respect of medals, orders and other honourable decorations, uniforms or equipments of members of H. M. Forces killed in war. *See also* pages 49 and 50.

16. Advowsons or Church patronage are not liable to Estate Duty, even when sold (A.-G. *v.* Peek and Others, [1913] 2 K. B. 487), but Succession Duty at the higher rates would be chargeable on a sale, and if the proceeds of sale pass under a settlement on a subsequent death they would be liable to Estate Duty even though the deceased life tenant were the spouse of the testator or settlor. *See also* page 7.

17. A single annuity not exceeding £25 purchased or provided by the deceased either by himself alone or in concert or arrangement with any other person for the life of himself or of some other person and the survivor of them, or to arise on his own death in favour of some other person, is exempt from Estate Duty (F. A. 1894, s. 15 (1)). If there is more than one such annuity the one first granted is entitled to the exemption. *See also* page 48.

18. Where an interest in expectancy has been *bonâ fide* sold or mortgaged for full consideration in money or money's worth before the F. A. 1894, Estate Duty is not payable by the purchaser or mortgagee. The purchaser or mortgagee is, in fact, only liable to pay the same duties that would have been payable if that Act and any amending Acts had not been passed (F. A. 1894, s. 21 (3)).

So also where the sale or mortgage takes place after the principal Act, but before one or other of the amending Acts, Estate Duty is only payable if it would have been payable at the time of the sale and, if so, at the rates then in force (F. A. 1900, proviso to s. 12 (1) ; F. A. 1907, proviso to s. 12 ; F. A. 1910, s. 64 ; F. A. 1914, s. 16 ; F. A. 1919, proviso to s. 29 ; and F. A. 1925, proviso to s. 22). These provisions relieve a purchaser or mortgagee from liability to a greater amount of duty than he could possibly have taken into account at the time the transaction was carried out.

It should be noticed that this exemption is for the benefit of the purchaser and mortgagee only, and only applies where the sale or mortgage is for *full* consideration in money or money's worth as between parties dealing at arm's length. In the case of a mortgage the practical effect appears to be that the property only escapes Estate Duty, or (where the mortgage was effected after the F. A. 1894) any increase of Estate Duty imposed after the transaction was effected, if at the death on which the reversion falls into possession, the equity of redemption has no value (*re* Vernon, deceased, [1901] 1 K. B. 297). In other cases of mortgages the Estate Duty is treated as a charge ranking after the mortgage debt.

Where the reversion is expectant on two lives, both of which fall in after the F. A. 1894, it is evident that on the death of the first, the interest of the second life tenant does not come within the exemption from Estate Duty as it was not included in the sale or mortgage (*re* Reversionary Interest Society ; A.-G. *v.* Walker, *Times*, 14th May, 1896). Apparently, therefore, Estate Duty is then payable but should be refunded when the second life tenant dies and the reversion falls into possession.

The purchaser or mortgagee in these cases if exempt from Estate Duty, is not entitled also to any exemption from Legacy Duty or Succession Duty which the payment of Estate Duty would involve, and the Succession Duty if the other circumstances are appropriate will be chargeable at the higher rates.

See also pages 323 and 324.

19. Where property is settled by a husband or wife, under a disposition taking effect before the F. A. 1894, on the other for life and on his or her death the settlor becomes entitled for life, Estate Duty is not to be paid until the death of the surviving spouse (F. A. 1894, s. 21 (5),

and A.-G. *v.* Strange, [1898] 2 Q. B. 39). The effect is to postpone payment of duty until the death of the spouse who settled the property. It should be noted that this provision only applies to dispositions taking effect before the principal Act and that the surviving life tenant must be the spouse who settled the property, and the income only and not the *corpus* of the property must pass to him or her.

See also page 60.

23. Timber is not liable to duty unless and until sold (F. A. 1910, s. 61 (5), as amended by F. A. 1912, s. 9), and its value as at the date of death is not taken into account for the purpose of ascertaining the rate of Estate Duty. On sales taking place, Estate Duty is payable on the net sums from time to time realised, with interest from the date of sale. If the timber is sold unfelled, or the land is sold with the timber, duty is payable on the value at the date of death, subject to an allowance in respect of Estate Duty paid on periodical sales. *See also* page 113.

24. The Treasury were empowered during the continuance of the Great War and twelve months thereafter to issue any war securities free from taxation. Such securities are not now liable to death duties so long as it is shown in manner directed by the Treasury that they are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in Great Britain or Northern Ireland (F. (No. 2) A. 1915, s. 47). This privilege applies to most of the securities issued by the Government in connection with the war. The term "domiciled" means having a permanent home there or, having had such a home, residing elsewhere without having abandoned all intention of returning, and the term "ordinarily resident" means habitually resident or resident in the ordinary course of a person's life (Levene *v.* Comms. of Inland Revenue (1926), 162 Law Times p. 97).

A similar power was conferred in connection with a loan in the United States of America (American Loan Act,

1915, s. 1 (3)) and in connection with securities issued in that country by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow if issued under the authority of the Treasury (F. A. 1916, s. 63). These securities are not to be liable to death duties except where they are held by persons domiciled in Great Britain or Northern Ireland or by British subjects ordinarily resident in those countries.

The question of liability of securities issued under the above powers is determined solely by the domicile or ordinary residence of the deceased holder at his death ; this is so, even if he were merely tenant for life and not absolute owner.

The power of the Treasury to issue securities free from taxation came to an end on the 31st August, 1922.

25. Allowances Against Estate Duty.

(*a*) *Duties at* £1 *per cent. and* £1 10*s. per cent. paid or payable before F. A.* 1894.—Where settled property passes under a disposition taking effect before the F. A. 1894 and Legacy Duty or Succession Duty at £1 per cent., the additional Succession Duties imposed by s. 21 of the Customs and Inland Revenue Act, 1888, or the temporary estate duties imposed by ss. 5 and 6 of the Customs and Inland Revenue Act, 1889, have been paid before the commencement of the F. A. 1894, on the *corpus* (*re* Lady Mary Foley, *Times*, 18th May, 1898) of that property, an allowance can be claimed against the Estate Duty in respect of such prior duty (F. A. 1896, s. 21, as amended by F. A. 1907, s. 15). This allowance may be either the sum actually paid, or duty at the same rate on the sum liable to Estate Duty, and on delivering the account the parties should elect which method they wish adopted. Thus, suppose

real estate were given by the will of *A*, who died in 1870, upon trust to sell, and the proceeds to his son for life and on his death to his children equally. On *A's* death Legacy Duty at £1 per cent. would have been paid on the *corpus* of the property or the proceeds of sale thereof as it devolved as personal estate to persons all liable to the same rate of duty. On the son's death in 1910, Estate Duty would be payable; but the Legacy Duty would be allowed in diminution of the Estate Duty. Thus, if the value were £2,000, and the rate of Estate Duty £3 per cent.—

	£	s.	d.
Estate Duty would amount to.. ..	60	0	0
Less Legacy Duty at £1 per cent. on £2,000	20	0	0
Amount payable..	£40	0	0

In the above instance it has been assumed that the value on *A's* death was the same as on the son's death. But suppose the property had depreciated and were worth only £1,500 at the latter date. The proper course would then be for the parties to elect, not to have an allowance of £1 per cent. on £1,500, but to claim to be allowed the amount actually paid. Thus—

	£	s.	d.
Estate Duty at £3 per cent. on £1,500	45	0	0
Legacy Duty actually paid: viz., £1 per cent. on £2,000	20	0	0
Amount payable..	£25	0	0

Similar allowances fall to be made against Estate Duty payable in consequence of the F. A. 1914, s. 14, in respect of settled personal estate which has borne Probate Duty and

on the *corpus* of which Legacy Duty at £1 per cent. or Temporary Estate Duty has been paid.

Legacy Duty or Succession Duty paid by way of *life interest* cannot be allowed against Estate Duty (*re* Lady Mary Foley, *Times*, 18th May, 1898).

(*b*) *Duty paid in a British Possession* (F. A. 1894, s. 20) (*see* pages 109 *et seq.* and 200 *et seq.*).

The mere fact that in any particular case the allowances referred to above may exhaust the Estate Duty does not affect the liability of the property to aggregation. This possibility furnishes the only instance of property in respect of which (on balance) no Estate Duty is payable, being liable to aggregation.

(*c*) *Settlement Estate Duty.*—As explained on page 72, on the first occasion on which Estate Duty becomes payable in respect of settled property in consequence of the F. A. 1914, s. 14, any Settlement Estate Duty that may have been paid is to be allowed as a deduction against the Estate Duty (*see* proviso (*b*)). The allowance can only be made against Estate Duty payable in consequence of that section. If the Settlement Estate Duty exceeds the Estate Duty the balance is to be repaid to the estate. In addition to the allowance of the duty, interest on the Settlement Estate Duty from the 15th August, 1914, up to the date of the occasion is to be paid to the person who would have been entitled to the income. The rate of interest would be £3 per cent. up to 31st July, 1919, and £4 per cent. after that date (F. A. 1919, s. 30).

(*d*) *Discount on Quick Successions.*—As regards land or a business or any interest therein, discount is to be allowed where there is a second passing within five years (F. A. 1914, s. 15, and *see* page 117). The allowance varies from 10 per cent. to 50 per cent., according to the year in which the second death takes place. Where the value on the second

death exceeds the value on the first death, the latter value is to be substituted for the purpose of arriving at the duty on which the discount is to be calculated.

(*e*) *Relief where Margin just exceeded.*—Where the aggregated estate passing on death just reaches over the next step in the scale of rates, the additional duty is not to exceed the amount of the estate which has attracted the higher rate of duty (F. A. 1914, s. 13 (1)). Thus, on the death of *A* three fully aggregable estates, value £4,000, £7,700 and £9,400 pass. The total is £21,100 and the rate would be £9 per cent. The last £100 thus attracts £219 extra duty, but under this provision the £100 is substituted for the extra duty, and the amount payable is therefore £1,780 which must be rateably apportioned between the three estates. *See also* page 81.

(*f*) *Relief to Agricultural Property.*—Where an estate includes such property, the agricultural value thereof is only liable to bear Estate Duty at the appropriate rate set out in the 3rd Schedule to the F. A. 1919. *See* page 104.

CHAPTER V.

SETTLEMENT ESTATE DUTY.

ALTHOUGH Settlement Estate Duty was abolished by the F. A. 1914, this chapter is retained, first, because Settlement Estate Duty is still payable in connection with deaths on or before the 11th May, 1914 ; secondly, because it is allowable against the Estate Duty payable on the first occasion after the 1914 Act came into operation ; thirdly, because under the law in force before the F. A. 1914, where it has been paid under a contingent settlement it is returnable if it can be shown that the contingency cannot take effect ; and fourthly, where property settled by a will or disposition taking effect before the above date included a reversionary interest and the parties elected to defer payment of Settlement Estate Duty until the interest fell into possession, Settlement Estate Duty will still be payable should it fall into possession after the passing of the F. A. 1914 (A.-G. *v.* Smith, [1923] 2 K. B. 531).

The duty was first imposed by the F. A. 1894, s. 5 (1), and was an additional Estate Duty charged on settled property. When Estate Duty had once been paid on settled property it was not again payable until the settlement came to an end, however many devolutions on death there might have been in the meantime, provided that none of the deceased persons had at any time been competent to dispose (F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13). As a set-off to this freedom from duty, Settlement Estate Duty was imposed at a fixed rate, originally £1 per cent., but increased by the F. A. 1910, s. 54, to £2 per cent.

It was payable where property was settled by the will of the deceased, or having been settled by some other disposition passed under that disposition on the death of the deceased to some person not competent to dispose.

To this statement there were two exceptions—

(*a*) Where the only life interest under the settlement after the death of the deceased was that of the widow or husband, Settlement Estate Duty was not payable (F. A. 1894, s. 5 (1) (*a*)).

(*b*) The duty was also not payable under any disposition which had taken effect before the F. A. 1894) see s. 21 (4)).

Property is said to be settled when it stands for the time being limited to or in trust for any persons by way of succession, whether absolutely or contingently, and whether there is technically a life interest or not (F. A. 1894, s. 22 (1) (*h*) and (*i*)). The disposition is none the less a settlement, because the interests of any of the tenants may determine not only on death but by some other event such as marriage, bankruptcy, alienation, etc.

The duty was payable—

(*a*) Under the will of the deceased.

(*b*) Under any other disposition if the property passed on the death of the deceased to some person not competent to dispose.

Where the claim for Settlement Estate Duty arose under a deed, the Stamp Duty paid on the deed was deductible against the Settlement Estate Duty (F. A. 1894, s. 5 (4)).

Contingent Settlements.

In the case of an absolute settlement the incidence of duty was in general clear, but Settlement Estate Duty was also payable under a contingent settlement or settlement on a contingency (A.-G. *v.* Fairley and Others, [1897] 1 Q. B.

689; A.-G. *v.* Clarkson, [1900] 1 Q. B. 156; and Watherston's Trustees *v.* Lord Advocate (1901), 3 Fra. 429). The contingency in such cases was an event provided for by the disposition itself and happening after the death of the deceased, which caused the property to devolve by way of settlement. Thus, where *A* by will gave property to his son on attaining twenty-five absolutely, but if he died under that age to his daughter for life and on her death to her children, the property was settled on a contingency: viz., that of the son dying under twenty-five; Settlement Estate Duty was therefore chargeable and was payable at the date of the testator's death. If, however, it could afterwards be shown that the contingency had not arisen and could not arise (as in the above instance on the son attaining twenty-five) the Settlement Estate Duty was returnable (F. A. 1898, s. 14).

Where property was given to a person for life and on his death as he should appoint, Settlement Estate Duty was not payable on the original testator's death, as the beneficiary was competent to dispose and the property would have been liable to Estate Duty on his death. But if the beneficiary by his will so exercised the power that a settlement was created, Settlement Estate Duty would have been chargeable by reference to his death. Where the life tenant's power to appoint was limited to certain persons or among a limited class, Settlement Estate Duty would of course have been chargeable on the original testator's death.

Annuities.

Where simple annuities were given without any direction as to how they were to be paid, Settlement Estate Duty was not chargeable in respect of them, but where the

residuary estate was settled, Settlement Estate Duty was chargeable, and no deduction for the value of the annuities might have been taken as the property out of the income of which the annuities were payable was settled (*see re* Grant ; Walker *v.* Martineau, 31 W. R. 703).

If, however, the annuity was directed to be purchased, the purchase money was deductible in the Settlement Estate Duty account of the residuary estate, as to that extent the estate was not settled. Subject as above, where an annuity was given *simpliciter*, Settlement Estate Duty was not chargeable.

Where there was a direction to set apart capital to provide for annuities, Settlement Estate Duty was chargeable on such capital whether the residue was settled or not (A.-G. *v.* Owen and Others, [1899] 2 Q. B. 253 ; A.-G. *v.* Coulson and Another, [1899] 2 Q. B. 253, and *re* Campbell, [1902] 1 K. B. 113). Where there was only a *power* to set aside capital for the annuity, Settlement Estate Duty was chargeable if capital was in fact set aside.

Annuities directed to be paid out of income of property were chargeable with Settlement Estate Duty whether the property out of which they were payable was settled or not. The duty was payable on a "slice" (ascertained on the principle laid down by F. A. 1894, s. 7 (7) (*b*)) of the property sufficient to provide the annuity.

An annuity *simpliciter* charged on unsettled real estate or leaseholds was not liable to Settlement Estate Duty.

Except in the case of reversionary interests, Settlement Estate Duty was invariably payable as at the death of the deceased and on the value of the property as at that date. It was subject to the like conditions as Estate Duty with regard to interest and, in the case of real estate, payment by instalments.

If more than one life interest was created the fact that the first life interest went to the widow or husband of the deceased did not entitle the accountable parties to postpone payment of the duty until her or his death.

In the case of reversionary property, payment of Settlement Estate Duty might have been made in the same way as Estate Duty, *i.e.*, at once on the value of the reversion or postponed until the property fell into possession. Where, however, it was decided to postpone payment of Estate Duty on a reversionary interest the payment of Settlement Estate Duty also had to be postponed, and *vice versâ*.

If Settlement Estate Duty was paid on a reversionary interest, and the property becomes liable to Estate Duty on a death after the 15th August, 1914, the Settlement Estate Duty can be allowed against the Estate Duty, provided the death is one on which Estate Duty would not have been payable but for s. 14 of the F. A. 1914 (*see* proviso (*b*)). For instance, *A*, who died in 1870, by will settled £1,000 on his daughter *B* for life, and then on her son *C* absolutely. C died in 1910, in the lifetime of *B*, having settled the reversion by his will, and Estate Duty and Settlement Estate Duty were paid on its value at his death. On the death of *B* after the 15th August, 1914, Estate Duty by virtue of s. 14 becomes payable under the will of *A* in respect of the legacy, but the Settlement Estate Duty paid under *C's* will can be allowed against the Estate Duty. If the owner of a reversion died before the 11th May, 1914, and the option to defer payment of Settlement Estate Duty was exercised, Settlement Estate Duty would still be payable, even though the reversion fell into possession on a death after that date, but if such death gave rise to a claim for Estate Duty by virtue of s. 14 of the F. A. 1914, the Settlement Estate Duty, if claimed and paid, would be allowable against the Estate Duty as stated above.

Where the deceased died domiciled abroad and his estate was settled, Settlement Estate Duty was only chargeable on the English assets, and where a legacy was settled, Settlement Estate Duty was only chargeable in respect thereof so far as it was paid or payable out of English assets. If it was directed by the will to be paid out of the foreign assets, Settlement Estate Duty would not have been chargeable at all. Where the domicile was in the United Kingdom, foreign personal estate, if settled, would have been liable to Settlement Estate Duty equally with the rest of the settled estate.

It was decided that where the deceased by way of gift within three years of his death settled property so that on his death it stood limited to or in trust for persons by way of succession and Estate Duty was payable, Settlement Estate Duty was not chargeable (Attorney-General *v.* Milne, [1914] A. C. 765). The decision proceeded on the ground that for Settlement Estate Duty to be chargeable there must have been an actual passing of the property on the deceased's death, and that it was not sufficient that the property should be *deemed* to pass within the meaning of s. 2 of the F. A. 1894.

Where property was settled, and the life tenant before receiving any part of the income disclaimed his interest, Settlement Estate Duty was not chargeable.

Persons Accountable.

The persons accountable for Settlement Estate Duty were the executors or trustees in whom the property was vested upon trust (F. A. 1896, s. 19 (2), and *in re* Maryon-Wilson; Wilson *v.* Maryon-Wilson, [1900] 1 Ch. 565). It differed from Estate Duty in that it was a charge on, and payable out of, the property in respect of which it was payable (F. A. 1896, s. 19 (1)), whether personal or real

estate, whereas Estate Duty, as already shown, is not a charge on personal estate which passes to the deceased's executor as such. Where, however, the settlement was of specific property by will and there was an express direction to the contrary (*re* Maryon-Wilson *supra*; *re* Leveridge; Spain *v.* Lejoindre, [1901] 2 Ch. 830; *re* King; Travers *v.* Kelly, [1904] 1 Ch. 363; *re* Dyet; Morgan *v.* Dyet, 87 L. T. 744; *re* Cayley; Awdry *v.* Cayley, [1904] 2 Ch. 781; Dundas's Trustees *v.* Dundas's Trustees, [1912] S. C. 375), settled property would have been free from such a charge and the Settlement Estate Duty would have been payable out of the residue.

Subject as above, Settlement Estate Duty, not being a testamentary expense, fell on the settled legacy and not on the residuary estate.

The account for payment of duty was required to be delivered within six months after the death or such further time as the Commissioners allowed (*see* F. A. 1896, s. 19 (2)).

In the case of real estate settled by the deceased's will or property settled by some other disposition, the trustees were required to account and the duty was payable out of the settled property unless it was otherwise provided for in the settlement.

Exemptions.

1. Property which was not liable to Estate Duty (*see* "Exemptions from Estate Duty") was also exempt from Settlement Estate Duty. The latter duty was a further Estate Duty and was not payable where Estate Duty itself was not chargeable.

2. Free estate not exceeding £1,000 (F. A. 1894, s. 16 (3)). (As to what property is comprised in the estate not exceeding £1,000, *see* page 89.) The result was that on

payment of Estate Duty such an estate was freed from all other duties. Nevertheless, on the death of a life tenant (not being the spouse of the settlor) a second Estate Duty becomes chargeable in consequence of the F. A. 1914, s. 14, even though the original estate did not exceed £1,000. The exemption from Settlement Estate Duty did not apply to property settled otherwise than by will of the deceased, and therefore where property passed under some other disposition (which had taken effect since the F. A. 1894) to a person not competent to dispose, Settlement Estate Duty would have been chargeable even though the value were under £1,000.

3. Land or chattels settled by Act of Parliament or royal grant so that none of the possessors could alienate (F. A. 1894, s. 5 (5)).

4. Property given upon trust to a charity, an ecclesiastical body, or corporation.

5. Where Settlement Estate Duty had once been paid under a settlement it was not again payable on subsequent deaths of limited owners (F. A. 1894, s. 5 (1) (*b*)).

6. Property settled by dispositions taking effect before the F. A. 1894 (*see* s. 21 (4)).

7. Settled property in which the *only* life interest was that of the husband or wife of the deceased (F. A. 1894, s. 5 (1) (*a*)).

8. Settled gifts *inter vivos* (A.-G. *v.* Milne, [1914] A. C. 765).

(As to the allowance of Settlement Estate Duty against Estate Duty chargeable in consequence of the F. A. 1914, s. 14, and interest thereon from the 15th August, 1914, *see* pages 72 and 179.)

CHAPTER VI.

ESTATE DUTY.—PRACTICE.

ON a death taking place, it is first necessary to prove the will, or, in the case of an intestacy, to take out letters of administration, in order that the deceased's representatives may obtain control of the estate.

For this purpose an inventory (known as the Inland Revenue Affidavit ; F. A. 1894, s. 22 (1) (*n*)) of the value of the estate is required. The forms in use, which vary according to the amount of the estate and the existence or not of settled property, are as follows :—

B–2.—Inland Revenue Affidavit for Probate or Administration : To be used where there is *no* settled property, and the *gross* principal value of the free and other unsettled property, real and personal (including property over which the deceased had and exercised by will a general power of appointment, and property which, by default of exercise of the power of appointment, belonged to the deceased absolutely), in respect of which Estate Duty is leviable on the death of the deceased, does not exceed £500, and either no duty is payable or it is desired to pay the fixed duty of 30s. or 50s.

B–4.—Inland Revenue Affidavit for Probate or Administration : To be used instead of the Form B–2, where there *is* settled property (not being property over which the deceased had and

exercised by will a general power of appointment, or property which, by default of exercise of the power of appointment, belonged to the deceased absolutely) in addition.

No. 27.—Summary of Duty and Interest: to accompany Form B–4.

NOTE.—Where in the circumstances of the case the *ad valorem* Estate Duty in respect of the net estate is less than the fixed duty, and it is desired to pay the smaller duty, the Form A-4, A-6, or A-7, whichever is appropriate, should be used, and not the Form B-2 or B-4.

A–4.—Inland Revenue Affidavit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists EXCLUSIVELY of *free* personal property situate in Great Britain passing under the deceased's will or intestacy; *except* where the Form B–2 is applicable.

No. 16.—Summary of Duty and Interest: to accompany Form A–4.

A–6.—Inland Revenue Affidavit for Probate or Administration: To be used where the property in respect of which Estate Duty is leviable consists EXCLUSIVELY of *free* personal and real property situate in Great Britain passing under the deceased's will or intestacy, except where the Form B–2 is applicable.

No. 17.—Summary of Duty and Interest: to accompany Form A–6.

A–7.—Inland Revenue Affidavit for Probate or Administration: To be used where the above forms and those mentioned below are not applicable.

No. 28.—Summary of Duty and Interest: to accompany Form A–7.

Y–1.—Inland Revenue Affidavit for Probate or Administration : To be used where the deceased died domiciled outside Great Britain and no property situate in Great Britain passed at his death, but a grant is required in respect of assets since transmitted to this country.

Z–1.—Inland Revenue Affidavit : To be used where the grant is only required for trust property and no Estate Duty is payable.

A–5.—Inland Revenue Affidavit : To be used where a second or subsequent grant is required in respect of property which was within the operation of a previous grant. Where it was not within such operation, the same form should be used as for an original grant.

No. 22.—For small estates under £100 in net value, where money is deposited in a savings bank or is due from a friendly society, and a certificate of exemption from duty is required to obtain payment of the money, no formal grant of representation to the deceased being necessary.

The forms usually employed are—

A–4.—Free personal estate only.

A–6.—Free real, and personal estate only.

A–7.—Where there is settled property as well on which duty is to be paid.

B–2.—For payment of the fixed duties simply.

B–4.—For payment of the fixed duties and also for payment of *ad valorem* duty on settled property as well.

If a grant is required in respect of settled land only, Form A–7 may be used. Paragraphs 3-5 and 8-13 should be struck out and the remaining paragraphs adapted. When the affidavit is presented to the Estate Duty Office an

assessment is made in due course if it is desired to pay the Estate Duty or an instalment thereof on the affidavit. But if the duty is not due and it is not desired to pay it on the affidavit, or if no duty is payable or if it has been paid on a prior Inland Revenue Affidavit or account, an appropriate endorsement is made on the last page of the affidavit.

Having ascertained the proper form, particulars should be given in detail showing the principal value of the estate, *i.e.*, the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the time of the deceased's death (F. A. 1894, s. 7 (5)). Such value is to be ascertained by the Commissioners in such manner and by such means as they think fit (F. A. 1894, s. 7 (8)). In the first instance, however, the value should be ascertained by the accountable parties, either by estimating it themselves or with professional assistance. In all cases full details should be given, showing the basis of valuation. If the Commissioners are not satisfied with the value so obtained they may appoint their own valuer, and in such cases the cost is borne by them (F. A. 1894, s. 7 (9)), but not where they merely call for a professional valuation.

Where the property has actually been sold within a short time after the death of the deceased, the gross sum realised may generally be taken as the principal value, but no deduction should be made for expenses of sale such as solicitors' or auctioneers' charges, printing, or advertising. If, however, money has been spent on the property since the death, other than for ordinary expenses of upkeep, so as to render it fit for sale or to realise a larger price, allowance might in certain cases be claimed.

Where the deceased was a considerable owner of particular property, no reduction is to be made on the ground that the market would be depressed if the whole property were placed on the market at once, but if the

death of the deceased has caused a depreciation in the value the Commissioners are required to take such depreciation into account (F. A. 1910, s. 60 (2)).

The above remarks apply generally to property the value of which is not at once ascertainable, but it will be convenient to consider in detail a few of the more frequently recurring species of property.

1. *Stocks and Shares.*—The values should be based on the prices of the Official Daily List of the London Stock Exchange. Where, however, the securities are not officially quoted, the values should be evidenced by—(*a*) letters from the secretaries of the companies or corporations certifying the values on the date of the deceased's death. These estimates are based on the prices at which, at or about the date of death, transfers have been registered, (*b*) published quotations indicating the values at the date of death, such as local share lists or quotations published in local or financial papers or share lists issued by the exchanges of provincial towns, or (*c*) certificates as to value furnished by a qualified broker acquainted with the securities in question.

In the case of private companies, where there have been no recent transfers on sale and the market is restricted (*see* Henry Jameson, deceased; A.-G. *v.* Jameson and Others, [1905] 2 I. R. 218); it may also be necessary to produce recent balance sheets and profit and loss accounts for consideration by the Commissioners. The principal value is the price which, in the opinion of the Commissioners of Inland Revenue, the shares would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered as the holder of the shares (*ibid.*).

Where, however, executors are *bound* to sell the deceased's holding at a "fair value" or "fixed price" in accordance with the Articles of Association of the company, that

figure will as a general rule represent the value for Estate Duty.

Quoted prices of stocks or shares generally show a higher and a lower closing price, the former being in effect the price which a purchaser would have to pay and the latter the price a vendor would get if he sold. The value for Estate Duty is ascertainable by taking the lower closing price and adding to it one-fourth of the difference between it and the higher price. For instance: if stock was quoted on the day of death at 96-98, the value on which Estate Duty is payable would be $96 + \frac{98-96}{4} = 96\frac{1}{2}$. When, however, bargains have been done for cash on the particular dates, the securities may be accounted for at the mean of the different prices, or if there has been only one bargain, at the price of that bargain.

Where the death occurs on a Sunday or other day for which no quotations are issued, the price for the last day before, or for the next day after, the death, on which quotations were issued should be taken.

Where the price does not include the dividend or, in other words, the quotation is "ex div.," the forthcoming dividend must be separately accounted for. Generally, however, the quotation is "cum div.," and thus the dividend is included in the price and should not be separately accounted for, nor should it be apportioned to the date of death.

As the values of stocks and shares on the date of death, ascertainable as above, can be fixed once and for all, any subsequent rise or fall, however great, is immaterial and will not give rise to any claim for further duty or for a return of duty. Where, however, securities are not quoted and their value at the date of death cannot be accurately determined owing to special circumstances, such as the speculative nature of the undertaking or the absence of

any dealings in them (as in the case of private companies), a claim for re-adjustment of the duty paid may arise if within a reasonable time of the death it is possible, owing to a sale or other circumstances, to determine with greater precision what actually was their value at the date of death.

Shares may in certain cases be a minus quantity, as where at the death they have no value and a call of unpaid-up capital has been made, or where a sum would have to be paid by the vendor in order to have the shares taken over by some other person. Subject to satisfactory evidence being adduced, the sum payable for calls or the consideration payable to a purchaser to induce him to take over the shares would be deductible against the estate.

2. *Policies of Assurance.*—The amount receivable from the assurance company, including bonuses, should be accounted for, and if payment is not obtainable until some time has elapsed since the death, a reasonable deduction by way of discount should be claimed. In the case of a policy on the life of another person, the saleable value at the deceased's death should be accounted for, and the company's estimate of such value up to £500 is not as a rule questioned. The saleable value is not necessarily the same as the surrender value. The latter value is what the company would pay for a surrender of the policy and is based on the assumption that the assured is in good health. It frequently happens that the saleable value is higher, and to ascertain the true market value, a valuation by an actuary or other independent person may be necessary. The market value of the policy at the date of death may be accounted for even though between that date and the date of lodging the Inland Revenue Affidavit the assured person has died.

3. *Furniture, household goods, stock-in-trade, farming stock, and outdoor effects.*—The value can in many cases

be estimated by the accountable parties, but it is not sufficient merely to account for a round sum. The value should be estimated in detail, and where it is considerable a detailed professional valuation and inventory should be obtained. Should the deceased possess pictures by artists of repute or articles of furniture having a special value, detailed particulars should be supplied, giving a separate value for each article and the name of the artist or creator. The Commissioners may in such cases employ their own art expert to inspect and report to them as to the value. In the case of chattels in respect of which it is intended to apply for a remission of duty (under F. A. 1894, s. 15 (2), or F. A. 1896, s. 20, as amended by F. A. 1910, s. 63 and F. A. 1921, s. 44), a separate schedule giving full details and a separate value for each item should be supplied. The estimate of farming stock should include the tenant right, such as unexhausted improvements, growing crops, etc.

4. *Assets of the deceased's business or profession.*—Where the deceased was in partnership, a balance sheet signed by the surviving partner or partners is necessary, showing the value of the deceased's share. This value is the real value of the share and not necessarily that at which the surviving partners have power to take over the share. The partnership deed or the draft or a copy thereof should in all cases be forwarded to the Commissioners for perusal. In ascertaining the value of the deceased's business or his share in a business, the goodwill should be taken into account where the business carries goodwill. This value can in general be estimated by taking so many years' purchase, according to the circumstances of each case or the custom of the trade, of the net profits of the business. Even if goodwill does not form part of the deceased partner's share, it is liable to duty if it passes by a gratuitous title on his death as, for instance, where under the partnership articles

he has power by document in writing (not a will) to appoint his share of goodwill to his son and such power is exercised. Where, however, the share of a deceased partner is to be ascertained from the last annual balance sheet of the partnership and the partnership deed does not make any provision for goodwill, and the executors of the deceased partner are not entitled to receive anything in respect of it, nothing need be brought into account for Estate Duty in respect of goodwill (A.-G. *v.* Boden, [1912] 1 K. B. 539, and *see* Scott *v.* Scott (1904), 89 L. T. 582).

Where the business has goodwill attached to it, the basis upon which the estimate of value is calculated should be given.

The gross amount of the book debts of a business should in all cases be given and the amount deducted for bad and doubtful debts should be shown.

Where the parties are entitled to discount under the F. A. 1914, s. 15, it will be necessary to satisfy the Commissioners (*a*) that the second death occurred within five years and is that of the person who took on the first death: (*b*) that the plant, machinery, stock-in-trade, or goodwill are substantially the same as passed on the first death after allowing for such changes in stock, etc., as occur in the ordinary course of business. The provision for discount is not considered to apply to liquid assets, but may be regarded as covering the excess of book debts over trade debts and any bank balance exclusively belonging to and used by the business, as well as stock and goodwill.

5. *Ships and shares in ships.*—A detailed valuation should in all cases be supplied.

6. *Interests in expectancy.*—The parties have to decide whether they will pay duty at once or postpone payment until the property falls into possession. In the former case they pay duty on the value of the reversionary interest.

In the latter case they pay duty on the value of the property at the time it falls into possession (F. A. 1894, s. 7 (6), and *re* Colonel Eyre, deceased, [1907] 1 K. B. 331). They may elect at any time before a grant of representation has been taken out, even though the reversion may in the meantime have fallen into possession. But after the grant is obtained, if they wish to pay duty before the reversion falls in, it can only be done by way of commutation, as follows : application should be made to the Commissioners to commute the duty, and this will generally be agreed to if the life tenant is in ordinarily good health and the circumstances render it desirable to commute (F. A. 1894, s. 12). The duty is assessed on the value of the property as if it were in possession and discounted at £4 per cent. for the life of the life tenant. If the reversion may fall in on other contingencies than death the allowance in respect of the life interest would be reduced.

Whether the option to defer payment of duty on an interest in expectancy is exercised or not, it is necessary to determine its value at the date of death for the purpose of ascertaining the correct rate of duty on the property in possession. In general, the value can be estimated by deducting from the principal value of the property at the date of death the value of the life interest. Thus : suppose the deceased were entitled to a sum of £1,000 on the death of *A*, aged sixty, who survives him ; £4¾ per cent. interest on £1,000 is £47 10s. the value of which, for a life aged sixty, according to Table I. (*see* page 419) in the Succession Duty Act, is £461 14s. 6d. Deduct this sum from £1,000 and the balance, £538 5s. 6d. may be taken as representing the value of the reversionary interest.

Instead of calculating interest at a fixed percentage, the average net annual income (without deduction for Income Tax) receivable by the life tenant may in the case of ordinary trust investments be taken and its value for the

life of the life tenant deducted from the principal value of the property.

Where the reversion is of considerable value or is dependent upon contingencies which may or may not happen, or where from any other circumstances it is difficult to arrive at its true value, a valuation by an actuary may be necessary. In these cases the basis of the actuarial calculation should in all cases be shown. In practice, actuarial calculations up to £2,000 are generally accepted, but the Commissioners may question them, and in cases of valuations above that sum the question of value would be submitted for actuarial consideration on behalf of the Revenue. In the case of contingent reversions, *i.e.*, interests which may never fall into possession, it is not sufficient to account for a merely nominal sum. A fair value, having regard to all the circumstances, should be accounted for (Lord Advocate *v.* Pringle (1878), 5 Rett. 912).

If the reversion is expectant on the joint lives or on the death of the survivor of two or more persons, the amount which may be deducted may be calculated in a similar way by means of the Succession Duty Act tables. These tables are based upon a £4 per cent. rate of interest.

If the rest of the estate does not exceed £1,000 the reversion may be treated as an estate by itself (F. A. 1894, s. 16 (3)), as it is regarded as property settled otherwise than by the will of the deceased : thus—

	£	s.	d.
Free estate	800	0	0
Reversion—value at death	300	0	0
Property passing under marriage settlement	4,800	0	0

The free estate forms an estate by itself and is not aggregable, and the rate is £2 per cent. Legacy Duty and Succession Duty are not payable thereon.

The reversion is aggregable with the settled property and the total being over £5,000 duty is payable on it and on the settled property at £4 per cent.

If the free estate and the reversion together do not exceed £1,000, it is open to the accountable parties to treat them as together forming the "estate by itself." The estate so constituted would be exempted from aggregation and from any other duties.

7. *Foreign property.*—The value should be calculated at the rate of exchange at the date of death and included in Account 2 of the Inland Revenue affidavit (Form A. 7). Deduction may be taken in Schedule 2 for foreign debts and foreign duty and extra expense of administration, if incurred, not exceeding £5 per cent. (F. A. 1894, s. 7. (3) and (4)). It may be added that unless it is otherwise claimed the domicile of a deceased person is, for the purpose of Estate Duty, assumed to have been in Great Britain. Where a domicile outside Great Britain is claimed, unless the facts of the case are sufficient to establish it, a statement is in general necessary showing the deceased's domicile of origin, *i.e.*, the domicile of his parents at his birth, and giving a short account of his life history up to the date of his death with the view of showing where he intended to make his permanent home. If the domicile claimed is different from the domicile of origin, evidence should be given to show that the deceased had in fact abandoned his domicile of origin and definitely assumed the domicile claimed for him (Winans *v.* A.-G., [1904] A. C. 287). (As to domicile generally, *see also* page 286).

If the assets are in a British Possession where reciprocal benefits are granted to British assets and the fact has been certified by Order in Council (F. A. 1894, s. 20), they should be brought into Account 2, as in the case of foreign assets, at their gross value, deducting any debts payable thereout and extra expenses of administration not exceeding £5 per

cent., if incurred. A certificate from the Colonial Court, certifying the amount of the duty paid there (for particulars of the duties payable in British Possessions *see* Hanson's Death Duties, 7th Edition, page 561), and giving particulars of the assets on which duty was paid, should also be furnished. In the case of Indian assets or other currency not in pounds sterling the amount paid should be expressed in English currency at the rate of exchange on the date of payment. The Colonial duty will then be allowed against the Estate Duty, but only to the extent of the Estate Duty paid on the Colonial assets, so that if the Estate Duty is less than the Colonial duty the balance cannot be allowed. Although the Estate Duty may be balanced by the Colonial duty, the value of the Colonial assets is still aggregable with the rest of the estate for the purpose of rate. If the duty on the Colonial assets covers income since the death (as, for instance, income up to the date when the Colonial grant was obtained), the Colonial duty on such income is not allowable, nor, where the Colonial duty covers immoveable property in the Colony, is the proportion of duty attributable thereto. The allowance is not to be diminished by the fact that the value for Estate Duty has been reduced by extra expenses of administration. If the certificate is not available when the Inland Revenue affidavit is lodged, a provisional allowance can be made if there is a *prim facie* case for it, on an undertaking being given to produce the certificate as soon as it is received, and to pay any further British duty without delay. In the alternative, a corrective affidavit claiming the allowance should be brought in subsequently.

A somewhat similar practice prevails as to Court fees paid at British Consular Courts having extra-territorial jurisdiction in respect of moveable assets within the jurisdiction of such Courts, in connection with grants of

representation. Application should be made for repayment of the fees, and should be accompanied by a certificate from the Consular Court vouching the payment of the Consular fees in respect of assets which are within the jurisdiction of that Court and are included in the Inland Revenue affidavit. A corrective affidavit is not required. The fees are transferred by the Foreign Office to the Revenue account, and when this is completed, the amount is repaid or made available to satisfy any outstanding claims for duty.

Where an Order in Council has not been passed with regard to any British Possession, the duty paid there can only be allowed against the value of the property and not against the Estate Duty thereon.

A list of the British Possessions to which s. 20 has been applied and to which it does not apply is given on pages 110 and 111.

As regards the allowance of duty paid in Ireland the statutory provisions are stated on pages 112 and 113, *supra*.

8. *Freehold and leasehold property.*—A form of schedule (No. 37) indicating the particulars required is supplied with the Inland Revenue affidavit. It is not necessary to obtain a professional valuation, and the value may be estimated by taking so many years' purchase of the net annual value. To arrive at the latter the gross rental if let, or the gross property tax assessment if unlet or occupied by the deceased, should be taken and from it deducted the annual outgoings paid by the owner : viz., repairs, insurance premiums, tithe rent charge, land tax, chief rent, or ground rent in case of leasehold property, and any other permanent annual outgoings not including property tax or expenses of management. The outgoings deductible are only those paid by the landlord, so that if rates and repairs are paid by the tenant they should not be deducted. The amount deductible for repairs depends upon the class and condition

of the property, and may vary from 10 to 20 per cent. or even more of the gross rental.

In estimating the value of property subject to statutory rent restriction in the occupation of the deceased, the value attributable to the element "*vacant possession*" should be included (Welby-Dawson *v.* Inland Revenue Commissioners, 97 *Estates Gazette* 183).

If the deceased had been the owner of a manor, particulars should be given of the manorial payments (if any) to which he was entitled at his death, and of any sums due as compensation for copyholds enfranchised by the Law of Property Act, 1922, s. 128, and the value thereof at his death should be accounted for.

As to ascertaining the value of licensed property, *see ex parte* Ashby's Cobham Brewery Company, Limited, *re* "The Crown," Cobham, and *ex parte* Ashby's Staines Brewery Company, Limited, *re* "The Hand and Spear," Woking, [1906] 2 K. B. 754.

Where a share only of property passes it should be valued independently and not on the footing that the property will be sold as a whole ; so that where an undivided moiety of property passed on a death, it was decided that a reasonable allowance ought to be made from half the value of the whole in order to arrive at the value of such moiety and this should be done even though the beneficiary is already the owner of the other moiety (Cust *v.* Inland Revenue Commissioners (1917), 91 *Estates Gazette* 11).

Formerly, the value of purely agricultural property was limited to twenty-five years' purchase of the gross assessment to property tax after deducting repairs, etc., and expenses of management not exceeding £5 per cent. (*see* proviso to F. A. 1894, s. 7 (5)). This provision was, however, abolished by the F. A. 1910, except as to small estates, and Estate Duty became payable on the full market

value (F. A. 1910, s. 60 (1)) ; except that where agricultural property includes labourers' cottages which have a special value as country cottages for townspeople and others no account is to be taken of any such additional value (F. A. 1911, s. 18).

In the case of free estates not exceeding £1,000 where there is property which is purely agricultural and has no special value for any other purpose, the value may still be limited to twenty-five years' purchase of the net annual value based on the gross assessment to property tax (*see* page 104).

As explained on page 104, *supra*, further relief of agricultural property (as defined by the F. A. 1894, s. 22 (1) (9)) was given by F. A. 1925, s. 23. It applies where property passes on a death on or after 30th June, 1925, and where the relief is claimed, the particulars should show (1) the purely agricultural value as defined by sub-section 2, and 2 the "excess principal value" (if any) which is the difference between the principal value and the purely agricultural value, the value of any timber not being taken into account. Value (1) is then only chargeable with Estate Duty at the appropriate rate indicated by the 3rd Schedule to the F. A. 1919.

When real and leasehold property come before the Estate Duty Office the question of value is referred to the Valuation Branch for an expression of opinion. The value is then gone into by the Government valuers, who, if necessary, communicate direct with the accountable parties or their representatives. On determination of the value a report (which in the case of agricultural property states separately the purely agricultural value) is sent to the Estate Duty Office and a statement prepared in the office, of any further duty payable on any increase or of any duty returnable on any decrease, is sent to the accountable

parties without the necessity for them to render a corrective affidavit. Should the amended value not be agreed to, however, the parties are entitled to appeal within thirty days in accordance with the provisions of the F. A. 1910. *Form No.* 35 should be used for giving notice of appeal, and *Form No.* 35–1 for notice of withdrawal of appeal.

In the case of land (including buildings thereon) or an interest therein passing on a second death within five years, discount on the Estate Duty should be claimed under the F. A. 1914, s. 15 (*see* page 117). It will be necessary for the parties to show that the person who took on the first death is the one who has died within five years, and that the land or interest therein passing on the second death is identical with the property passing on the first death. If the value on the second death is higher than the value on the first death, the former value is to be taken for the purpose of calculating the discount. The rate and amount of duty on the first death are immaterial.

The deceased's estate should include all arrears of income up to his death and an apportionment of unpaid income up to the same date (*see* Apportionment Act, 1870). Therefore, besides arrears, an apportionment of rents, mortgage interest, income from property of which he was the life tenant, pensions, annuities, director's fees, profits of business, etc., should be included in the affidavit (F. A. 1894, s. 6 (5)). If the deceased was tenant for life of settled securities, an apportionment of the dividends should (if his representatives are entitled to such apportionment, as to which see Bulkeley *v.* Stephens, [1896] 2 Ch. 241) be included in the Inland Revenue Affidavit of his estate and may then be deducted in the Estate Duty account of the settled funds, but if the securities were quoted "ex dividend" the whole of the dividends should be included in the affidavit and no deduction taken in the account.

Deductions.

After specifying the assets, deduction may be taken for debts due from the deceased and for funeral expenses.

The debts must have been created by the deceased for full consideration in money or money's worth and for his sole benefit and so that he alone is liable (F. A. 1894, s. 7 (1)). Voluntary debts, *i.e.*, debts created for some other consideration than money, are not deductible (Lord Advocate *v.* Gunning's Trustees (1902), 39 S. L. R. 534, and *re* Gray ; Gray *v.* Gray, [1896] 1 Ch. 620), nor guarantee debts, unless the estate is called upon to pay and repayment cannot be obtained from the principal debtor. Where the estate may be liable for future rent under a tenancy agreement, or for dilapidations under a lease or, in the case of a clergyman, for dilapidations to the rectory or vicarage, no deduction should be taken until the actual amount of liability is ascertained and paid ; and it may be necessary to make a claim for return of duty on these grounds by corrective affidavit after the grant of representation has been obtained. Rent due after the death can only be allowed if the tenancy created by the deceased cannot be got rid of or the house sublet. If the deceased's family continues beneficially to occupy the house after his death under the tenancy created by the deceased no allowance can be claimed, as the payment of rent after the death is for their benefit. But if the house cannot be let and the landlord accepts a surrender of the tenancy on payment of a lump sum, such sum may be deducted as well as rent up to the date of surrender.

Where the deceased has bound himself for consideration in money or money's worth to pay an annual sum to another person, deduction may be taken of the value of such sum according to the tables in the Succession Duty Act. Where, however, the liability was voluntary, no deduction may be taken (F. A. 1894, s. 7 (1) (*a*)).

As regards the deduction of other annuities, *see* page 107.

Mortgage debts, whether ancestral or created by the deceased or by a life tenant and reversioner together, may be deducted and an apportionment of interest up to the death may be deducted against the deceased's estate.

Where the property consists of copyholds enfranchised by the Law of Property Act, 1922, valued as freehold, deduction may be taken for the value of any manorial payments to which the lord remains entitled, or, if a compensation agreement has been entered into, deduction should be taken of the value of such compensation at the date of death, whether it consists of a lump sum or of periodical payments spread over a term of years.

In the case of small estates not exceeding £500 gross where the fixed duties are paid, mortgages and incumbrances on real estate and leaseholds can only be deducted (F. A. 1894, s. 16 (1))—

(*a*) If created by a predecessor in title to the deceased.

(*b*) If created by the deceased for the purpose of purchasing the property (F. A. 1910, s. 61 (2)).

If the property includes timber, a separate value may be placed upon the latter, but Estate Duty is not paid thereon and it is not taken into account for the purposes of rate. But on sales taking place Estate Duty should be accounted for on *Form* C–1 in duplicate on the net proceeds of sale from time to time received after deducting necessary outgoings, as to which *see* page 335. Should the timber be sold standing, either with or apart from the land, Estate Duty is payable on the value of the timber at the date of death, with an allowance for Estate Duty already paid in respect of periodical sales (*see* page 113 *et seq.*).

Funeral expenses should be of reasonable amount having regard to the position of the deceased and the size of the estate; and in certain cases expenses of mourning, though not strictly funeral expenses, might be allowed.

In considering the rate of duty payable, the provisions of the F. A. 1914, s. 13 (1), for reduction of the full amount of duty where the margin above the next step in the scale is small, should be borne in mind (*see* pages 81 and 180).

Corrections.

Where further assets are discovered or it is found that assets were wrongly included in the original affidavit or the amounts or values were incorrect, a corrective affidavit should be rendered on *Form* D–1 to adjust the duty (F. A. 1894, s. 8 (7) and (12)). Where it is for additional duty it should be rendered in duplicate, one copy being signed by the executors, but it need not be sworn to in the first instance unless entirely new assets are accounted for. If it is for return of duty it need not be rendered in duplicate but should be signed and sworn to by all the executors, and should be accompanied by the Probate or Letters of Administration. In return of duty cases, the interest actually paid on the duty returnable is allowed, but not interest for the time the money has been in the hands of the Crown. The Crown is not in fact chargeable with interest unless the over-payment was due to an over-valuation by the Commissioners (F. A. 1894, s. 8 (12)) or interest is allowed by the Court (F. A. 1894, s. 10 (3)).

Accounts.

It should be noticed that Estate Duty must be paid on the Inland Revenue Affidavit on the deceased's personal estate. Estate Duty may also be so paid on his real estate, gifts *inter vivos*, and on settled property (F. A. 1894, s. 6 (2)), but if it is not so paid then a separate account

on *Form* C–1 in duplicate should be rendered. The account should be signed and sworn to by the accountable parties, who, in the case of real estate, are the personal representatives, the estate owner or the proprietor of a registered estate, and in the case of settled property are the trustees in whom it is vested. The value in the case of a gift *inter vivos* should be ascertained as at the date of death (*see* page 34).

Where the duty on real estate is being paid by instalments, *Form* C–3 (not in duplicate) should be used for the second and subsequent instalments. If the property is sold, exchanged or mortgaged, all the unpaid instalments should be at once accounted for, and if there is timber on the land, Estate Duty should be accounted for on the value thereof as at the date of death.

Should any correction of an account be necessary (as where further assets are recovered or the value was overstated), a corrective account on *Form* D–2 should be rendered on similar conditions to *Form* D–1. Where it is for return of duty it should in all cases be accompanied by the stamped and receipted account on which duty was originally paid.

Where Estate Duty is payable on the cesser of an interest, if the interest extends to the whole income of the property, Estate Duty is payable on the principal value of that property (F. A. 1894, s. 7 (7) (*a*)). Thus, if under the will of *A*, who died before the F. A. 1894, *B*, who dies in 1910, is entitled to an annuity of £50 charged on a piece of land worth £1,500 and the income is less than £50, Estate Duty is payable on *B's* death on the full £1,500.

If, however, the interest is less than the whole income, Estate Duty is payable on the "slice" of the property sufficient to produce the income to which the interest extended (F. A. 1894, s. 7 (7) (*b*); *re* Parker-Jervis; Salt *v* Locker, [1898] 2 Ch. 643, Ld. Adv. *v.* Henderson's Trustees

(1905), 42 S. L. R. 720, and Ld. Adv. *v.* Fothringham, [1924] S. C. 52). Thus, if in the above instance the net income of the land were £75, the "slice" sufficient to produce £50 per annum would be $\frac{50}{75} \times 1{,}500 = £1{,}000$. If the annuity is chargeable on a residuary estate and no capital has been set apart, duty may be conveniently accounted for on a notional capital sufficient to produce the annuity at £4¾ per cent., that being the current average rate for trust securities. *See also* page 51 *et seq.*, *supra.*

In the case of an annuity provided by the deceased and arising on his death, the value for Estate Duty may be calculated from the tables in the Succession Duty Act, taking the completed age of the annuitant at death. The duty in such case may be paid by four equal yearly instalments, the first payable one year after death, interest on the unpaid duty from that date being charged (F. A. 1896, s. 16). It should be noted that the above tables are based on a £4 per cent. rate of interest and an average expectancy of life. They may not therefore be suitable for ascertaining the principal value in special cases.

Settlement Estate Duty.

The form for payment of Settlement Estate Duty is *Form* C–2. As the duty was a further Estate Duty the account was based on the value of the estate as given in the Inland Revenue Affidavit, deduction being taken for Estate Duty, legacies and testamentary expenses. Interest is chargeable as in the case of Estate Duty. If it is required to correct the duty or apply for return of duty, *Form* D–2 should be used and should be accompanied by the original receipted account where it is for return of duty.

The stamped account is not required when Settlement Estate Duty is to be allowed against Estate Duty under proviso (*b*) to s. 14 of the F. A. 1914 (*see* pages 72-74). The duty allowed will as a general rule belong to the settled

property, but where the settlement was made free of duty, and the Settlement Estate Duty was therefore paid out of some other fund, it is conceived that it should in strictness be restored to that fund. A separate application should be made on *Form* 38 for the allowance of interest on the duty from the 15th August, 1914, and where there is doubt as to who is entitled to it the written consents of all interested parties should be furnished. In general the interest will belong to the deceased life tenant's estate, and should be accounted for as such (*see re* Sutherland ; Chaplin *v.* Leveson-Gower, [1922] 2 Ch. 782). Where, however, there had been a previous death of a life tenant after the 15th August, 1914, on which Estate Duty was not payable, the interest would have to be rateably apportioned between each life tenant's estate. For instance, *A*, who died in 1910, by will settled property on his wife *B*, who dies in December, 1915, for life and then on his daughter, *C*, who dies in June, 1920. A further Estate Duty would not become payable on *B's* death, but it would on *C's* death, and therefore interest on the Settlement Estate Duty allowed on the latter event would have to be apportioned rateably between *B's* and *C's* estates. (As to the method of calculating the allowance of Settlement Estate Duty and interest in the case of a settled fund subject to a continuing annuity, *see re* Booth ; Pleace *v.* Booth, [1916] 1 Ch. 349.)

Commutations.

In cases where it is desirable to commute Estate Duty presumptively payable on settled property on the death of a life tenant (as to which *see* page 121 *et seq.*), application should first be made to the Commissioners, setting forth the facts fully and stating how the property or the proceeds of sale, if sold, are being dealt with. In general, where property is being taken out of settlement, the duty to be commuted will be

Succession Duty and not Estate Duty. Where, however, Estate Duty is to be commuted, *Form No.* 20 in duplicate, which is forwarded by the Estate Duty Office when agreeing to commute, should be used. It should show the market value of the property at the time. If there has been a sale the gross proceeds of sale should be accounted for. If however, the sale is of the reversionary interest expectant on the death of the life tenant it is not sufficient to include the proceeds of the sale. The value of the property itself as in possession should be accounted for. The duty is calculated on the value in possession and is then discounted for the life of the life tenant. Thus, suppose the value in possession were £4,000 and the age of the life tenant sixty-two : the rate of duty would be £3 per cent. and the amount £120. The discounted value on a £4 per cent. basis of £120 expectantly payable on the death of a person aged sixty-two is £74 12s. 6d. and this is the sum payable by the accountable parties. It should be paid within twenty-one days or a re-calculation may be necessary.

It will be noted that the rate of duty is ascertained by reference to the value of the property in possession. If, however, there is other property settled by the same instrument which will presumptively pass on the same death, the value of such property is aggregable with the property on which duty is being commuted and it may therefore increase the rate of duty. Where also there have been previous commutations of Estate Duty the values must be taken into account for aggregation purposes. But subject to this, no account for aggregation purposes is taken of other property, such as the life tenant's free estate or property settled by other instruments, which may pass when he dies.

Where the life interest may determine on other contingencies than death the allowance in respect of the life

interest is reduced, and in the case of a life tenant whose interest is for life or until re-marriage, the allowance is reduced as follows :—

Where the age of the life tenant exceeds—

20	and	does	not	exceed	30,	allowance reduced by one-half
30	,,	,,	40	,,	,,	one-third
40	,,	,,	50	,,	,,	one-fourth
50	,,	,,	60	,,	,,	one-fifth
60	,,	,,	70	,,	,,	one-sixth
70				,,	,,	one-eighth.

Certificates.

The following statutory certificates may be obtained on application being made on the forms noted below. No fee is payable (F. A. 1894, s. 8 (15)) :—

No. 25 (in duplicate).—For certificate under F.A. 1894, s. 11 (1), discharging the property from Estate Duty. It is not issued in respect of property passing to the executor as such (including leaseholds) on which the Estate Duty is not a charge. The application should be made by the accountable persons or their solicitors, or by persons authorized in writing by them, and should contain a description of the property sufficient to identify it in the Inland Revenue Affidavit or accounts. It was usually required for production to the purchaser when real estate had been sold, but for this purpose form No. 26, *infra*, will now be the more appropriate application. The certificate is issued not only when the duty has been fully paid, but also when the Commissioners are satisfied that it will be paid. It discharges the property from the charge of Estate Duty, but the

accountable parties are not necessarily released from their liability.

No. 26 (in duplicate).—For certificate under L. P. A. 1925, s. 16 (7). This certificate is issued in similar circumstances and under similar conditions to that mentioned above, but it relates to all duties and not merely to Estate Duty, so that where Succession Duty is payable, and would constitute a charge on the property, that duty should be accounted for before application is made. If the property has been sold, and there is timber upon it, Estate Duty and Succession Duty should first be accounted for in respect of such timber. The certificate may be issued not only when the duties have been paid or commuted, but also when the Commissioners are satisfied that they will be paid or commuted. This certificate on production to the Land Registrar is a sufficient authority to enable him to cancel any land charge registered in respect of the property.

No. 29.—For certificate under the F. A. 1894, s. 9 (2). This certificate shews the amount of Estate Duty paid in respect of property not passing to the executor as such. It also gives particulars of the property on which the duty has been paid and the debts and incumbrances allowed, and constitutes evidence that the amount of duty named therein is a first charge on the property specified.

No. 30.—For certificate under the F. A. 1894, s. 11 (2). This is not limited to property on which the Estate Duty is a charge, and discharges both the applicant and the property specified in the form

from any further claim for Estate Duty in connection with the death on which duty has been paid.

No. 31 (in duplicate).—For certificate under the Land Transfer Act, 1897 (s. 13 and Rules thereunder, and under L. R. A. 1925, s. 73 (8) and (9), and Rule 192 thereunder). This is required in order that notice of any liability to duty on the land register may be cancelled, or that property may be registered without any such notice. This form may be adapted and used for a similar application under the L. R. A. 1925, in respect of death duties payable or leviable after 1925 (*see* s. 73 (16)).

No. 32 (in duplicate).—For certificate to lead to payment out of funds in Court. Where an Order of Court directing payment, transfer or delivery of funds in Court, in respect of which duty is payable, does not direct payment of such duty, it must be stated in the payment schedule that such payment, etc., is subject to duty, and before acting on the Order the Paymaster is to require the production of the official receipt for such duty or a certificate on *Form* 32, either that it has been paid or that it is not payable. The office copy Order should be produced before the certificate can be granted.

No. 33 (in duplicate).—For certificate that funds in Court may be dealt with as directed, subject to payment of duty as shown in official requisition. Where the Court directs duty to be paid out of funds in Court such duty is assessed on the usual accounts being rendered, and on a requisition being made by the Estate Duty Office to the

Paymaster is paid by transfer at the Bank of England from the account of the Paymaster to that of the Inland Revenue. The office copy Order directing payment of duty is required when the assessment is made. A certificate on the form in question can then be made, on application, to the effect that subject to payment of the duty shown to be payable by the requisition, there is no objection to the fund being dealt with as directed by the Order.

No. 34 (in duplicate).—Application for certificate for payment into Court under the Trustee Act, 1925.

In addition to the above, non-statutory assurances can be obtained on application by letter as follows :—

(1) A purchaser, who would not be entitled to apply on Forms No. 25 or 26, could obtain an assurance as to any particular item of property he is interested in on giving a sufficient description of the property to enable it to be identified, and the name of the deceased and the date of his death.

(2) Where an estate comprises assets of the United States of America, a certified copy of the Inland Revenue Affidavit including such assets, and of any corrective affidavits is usually required. This is supplied by the Estate Duty Office on application by the executors or their solicitors, and on payment of a small charge for copying and certifying—or the copy may be prepared by the accountable parties and sent to be certified.

(3) Where the deceased died domiciled in Northern Ireland (*see* pages 112 and 113), or in a dominion or colony to which the converse of s. 20, F. A. 1894, applies, possessed of assets in Great Britain, an

assurance verifying payment of British Estate Duty on such assets is given on application. Where the deceased died domiciled in the Irish Free State (*see* page 112), possessed of assets situate in Great Britain, a similar assurance is automatically given on presentation of the English Inland Revenue Affidavit (accounting for the British Estate Duty on the British assets), to lead to an appropriate allowance of the British Estate Duty against the Estate Duty payable in the Irish Free State.

(4) Certain Companies carrying on the business of mining, etc., in the Colonies, mainly in New South Wales, are required by the Colonial Government to see that the duty imposed by it is paid, or that it is not payable in consequence of the payment of British Estate Duty. Before the Probate can be registered, a Certificate is required by the Company as to this latter duty and this is given, where the Head Office of the Company is in Great Britain, or the shares are registered on a register in Great Britain, on application stating the name of the deceased, the date of his death and the particulars of the holding as included in the Inland Revenue Affidavit. Where a Corrective Affidavit is pending which may involve a reduction in the rate of Estate Duty, the application should be held over until the Corrective Affidavit is disposed of.

Where the estate does not exceed £100 and comprises sums in a Friendly or Provident society or fund which, under statutory authority (*see* pages 171-172), can be dealt with in the absence of a grant of representation, and it is desired to

obtain payment without applying for such a grant, *Form* No. 22 should be filled up and forwarded to the Estate Duty Office, shewing in detail what the estate consisted of and what sums were deductible for funeral expenses and debts. If the net amount is under £100 a certificate can then be issued which will enable the parties entitled to obtain payment.

Grants de bonis non.

Where, owing to the death of an administrator or the death intestate of a sole executor, or for any other reason, the original grant of representation becomes inoperative and a further grant is required, application should be made in the first instance to the Estate Duty Office for a certificate that duty has been paid. It should be made by memorial, and instructions with a model form of memorial can be obtained from the Estate Duty Office. The memorial should be accompanied by an Inland Revenue Affidavit on *Form* A–5 duly completed. If the application is in order, the *Form* A–5 is returned with a certificate as to payment of duty indorsed, and is then ready for presentation to the Probate Registry in the ordinary course.

Resealing.

Should it be required to reseal an English grant of representation in Scotland, or *vice versa*, this can only be done where the deceased was domiciled in the country issuing the original grant (Confirmation of Executors (Scotland) Act, 1858, s. 14, and Supreme Court of Judicature (Consolidation) Act, 1925, s. 168). Where the deceased was not so domiciled, resealing between these two countries is not permissible, and, to obtain title to the property situate in the other country, a separate grant must be taken out there. In such cases where the British Estate Duty in respect of all the British property has been duly paid prior

to the issue of the original grant, the English Inland Revenue Affidavit, or Scottish Inventory, in relation to the grant covering the property in the other country, should be forwarded by post to the Registrar, Estate Duty Office, Edinburgh, or to the Controller, Estate Duty Office, Somerset House, London, W.C.2 (as the case may be), with a request that it may be impressed with a duty paid stamp indicating that the relative British Estate Duty has already been paid.

Grants of representation issued outside Great Britain can only be resealed within Great Britain on the terms either of the Colonial Probates Act, 1892, or (in Northern Irish cases) on the terms of s. 169 of the Supreme Court of Judicature (Consolidation) Act, 1925, and s. 14 of the Confirmation of Executors (Scotland) Act, 1858, subject, as regards the Act of 1858, to adaptations effected (in pursuance of ss. 28 and 69 of the Government of Ireland Act, 1920) by the Government of Ireland (Resealing of Probates, &c.) Order, 1923 (S. R. & O., 1923, No. 613). In all these cases it is an essential preliminary to the reseal that the British Estate Duty should be paid, prior to the reseal, in the same manner as if an original grant were being applied for.

It may be noted that on the death of a holder of any Government stock, resealing as between England and Scotland is unnecessary as regards such stock (F. (No. 2) A. 1915, s. 48 and F. A. 1916, s. 67). Northern Ireland is expressly excluded from this arrangement (s. 169 (4) of the Supreme Court of Judicature (Consolidation) Act, 1925, and Article 3 (5) of the Resealing Order of 1923, referred to in the preceding paragraph).

The Bank of England has also authority to transfer War Stock not exceeding £100 standing in its books in the name of a deceased person to the Post Office Stock Register and,

subject to ensuring that any Death Duties are provided for, it is also authorised to deal with Government Stock of a nominal amount not exceeding £500 standing in the name of a person who has died on actual military service and was resident in His Majesty's Dominions outside the British Islands or in any territory under His Majesty's protection (F. A. 1918, s. 38, War Loan Act, 1919, s. 5).

Payment of duty.

Payment of the duty when assessed may be made personally at the Accountant-General's Department, Somerset House, or by post to the Accountant-General by means of a cheque drawn in favour of the Commissioners of Inland Revenue or Bearer, crossed "Bank of England—Inland Revenue," or, where the duty does not exceed £40, by Money Order, free of commission, similarly drawn and crossed.

It may also be made by transfer of Government securities issued in connection with the Great War (F. A. 1917, s. 34, as amended by F. A. 1918, s. 42). In accordance with regulations by the Treasury (Death Duties, etc. (Payment in Securities) Regulations for 1918, 1919 and 1921), the Commissioners of Inland Revenue are empowered to accept the following securities and to arrange with the applicant the procedure to be followed in each particular case for their transfer :—

4 % National War Bonds 1927, 1928 and 1929.
5 % „ „ „ 1927, 1928 and 1929.
4 % War Loan, 1929–42, Stock and Bonds.
5 % „ „ 1929–47 „ „
4 % Funding Loan, 1960-1990, „ „
4 % Victory Bonds.

These securities (other than War Loan Stock or Bonds resulting from the conversion of 4 per cent. or 5 per cent. National War Bonds, which can only be accepted if

the bonds converted were eligible for acceptance or, if not, if the time they formed part of the estate and the time which has elapsed since conversion aggregate six months) can only be accepted if it is shown to the satisfaction of the Commissioners of Inland Revenue that the stock or bonds formed part of the estate passing on death of deceased, or of the assets of a partnership of which he was a member, for at least six months preceding death, or continuously from the date of the original issue.

In addition, it is provided as to the Funding Loan and Victory Bonds that where they formed part of the assets of a partnership they may only be tendered to an extent proportional to the share of the deceased in the capital of the partnership (as determined for the purposes of Death Duties), and must have been held by the partnership for a period of not less than six months preceding death or continuously from the date of the original issue.

Application should be made to the Controller, Estate Duty Office, and should give particulars of the securities, and state (1) whether they are in the form of bearer bonds or registered stock or bonds, and in the latter case, in whose name they are registered and whether in the books of the Bank of England or of the Post Office, (2) whether subject to any lien or charge and (3) whether under the applicant's control and, if not, in whose custody they are.

It should be noted that the option of paying duty in this way falls to be exercised once and for all at the time of payment of the duty on the Inland Revenue Affidavit, inventory or account, and the question of payment cannot be reopened in the event of the duty being paid in cash in the first instance.

The value (95 per cent. in the case of the 5 per cent. War Loan, 80 per cent. in the case of Funding Loan and 100 per cent. in other cases), is to be calculated at the price of issue or such

other price as was specified for this purpose at the time of issue, with the addition of interest accrued to the date of transfer, but deducting any interest receivable by the transferor after that date. The value is not to exceed the amount payable, but in the case of Victory Bonds arrangements are made by the Estate Duty Office for Bank of England or Post Office Bonds of smaller denomination to be given in exchange, regard being had to the fact that the lowest denominations issued by the Bank and Post Office are £50 and £5 respectively.

Bonds to bearer must have all undue coupons attached.

The securities are accepted subject to any necessary verification and, where the securities were in deceased's name, and it is desired to use them in payment of Estate Duty on the Inland Revenue affidavit, to an undertaking by the executors to take all necessary steps to complete the transfer immediately after the grant of probate has issued. Credit is given against the Estate Duty and interest for the value of the stock or bonds. At the present time the transfer of Victory Bonds only is profitable. Full instructions as to procedure for transfer of these Bonds are given by the Estate Duty Office in *Form* Con. 55.

The fixed duties of £1 10s. and £2 10s. are payable by means of an adhesive stamp, which should be affixed to the first page of the Inland Revenue affidavit.

Miscellaneous.

The rate of interest on duty is now fixed at 4 per cent. in the case of deaths on and after 31st July, 1919 (F.A. 1919, s. 30), so that if duty became payable before that date and remained unpaid, interest would be charged at 3 per cent. up to then and thenceforward at 4 per cent. Similarly where discount is allowable.

Detailed instructions as to forms, rates of duty, &c., are contained in the official *Form* A–2.

Accounts and corrective affidavits may be sent by post or, if desired, may be left by hand at the Estate Duty Office. They are then examined and instructions sent by post as to the amount of duty payable and the mode of payment. Personal attendance is not necessary, but in suitable cases an appointment can be arranged.

The Estate Duty forms can be obtained from the Controller, Estate Duty Office, Somerset House, London, W.C.2, on personal application or by letter. *Forms* A–2, A–4, A–6, A–7, B–2, B–4, C–1, C–3, D–1, D–2 and No. 25 may also be obtained at head post offices outside the Metropolitan Postal District and at the Throgmorton Avenue Post Office, London Wall, E.C.2, on personal application.

As regards Scotland, instructions as to forms, etc., are contained in *Form* N. Forms may be obtained at the Estate Duty Office, Edinburgh, or at authorized stamp and post offices in the country. Any enquiries should be addressed to the Registrar, Estate Duty Office, Edinburgh.

PART II.

LEGACY DUTY.

THIS duty is a tax upon *personal* property under wills or intestacies.

It was first imposed in 1780 (20 Geo. III, c. 28), but its scope has since been extended and it is now mainly regulated by the Legacy Duty Act, 1796 (36 Geo. III, c. 52).

The rates of duty were formerly graduated from £1 per cent. for lineal issue to £10 per cent. for strangers in blood. The F. A. 1894, practically abolished the £1 per cent. duty (F. A. 1894, s. 1, 1st Schedule, 5th par.). Then came the F. A. 1910, which, in the case of considerable estates, re-imposed the £1 per cent. duty and also charged it upon the husband or wife of the testator or intestate, raised the £3 per cent. rate for brothers and sisters and their descendants to £5 per cent., and charged all other legatees at £10 per cent. (F. A. 1910, s. 58). Children adopted in accordance with the Adoption of Children Act, 1926, are now chargeable at the same rate as lineal issue, *see* page 236.

Legacy Duty differs from Estate Duty in the fact that the latter duty falls upon the property passing on a death without regard to the persons who benefit, but Legacy Duty is imposed upon the actual benefit taken by the legatees at a rate depending upon the relationship borne by them to the testator or intestate. Legacy Duty, moreover, except in the case of *donationes mortis causa*, is only payable under a will or intestacy and (except under the will of a testator dying before 1st July, 1888, Customs and Inland Revenue Act 1889, s. 21 (2)), only on personal property, excluding leaseholds.

It differs from Succession Duty in that, except in the case of *donationes mortis causa*, it is only payable under wills or intestacies and not under settlements or other dispositions. Formerly, too, where a testator died after 1st July, 1888 (*ibid.*), the rates of Succession Duty on property which had not borne Probate Duty were higher than those of Legacy Duty, but now where Estate Duty is paid the rates are the same.

Another peculiarity of Legacy Duty is that it is dependent on the domicile of the testator. The rule of law is that, for the purpose of succession and enjoyment (Blackwood *v.* The Queen (1882), 8 A. C. 82 P. C.), pure personal estate, wherever it may in fact be, follows the domicile of the owner, and Legacy Duty is therefore only payable on the personal estate of persons domiciled in Great Britain. If a testator is domiciled abroad, no Legacy Duty is payable in this country even on his personal estate locally situate here.

The duty was formerly payable on the proceeds of real estate directed to be sold and legacies and annuities charged by will upon real estate, but only where the testator died before 1st July, 1888. Since that date Succession Duty is payable instead (*ibid.*). Instances of Legacy Duty payable in these cases are not now of frequent occurrence and practically only arise where duty becomes payable on the death of a tenant for life of the proceeds of real property given by the will of a testator dying before 1st July, 1888.

The text of the Acts relating to Legacy Duty is given in the Appendix, commencing page 393.

The duty may be conveniently considered under similar heads to those adopted in the case of Estate Duty : viz.—

1. The Property upon which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable.
4. Exemptions.

CHAPTER VII.

THE PROPERTY UPON WHICH LEGACY DUTY IS PAYABLE.

LEGACY Duty is payable upon—

(1) *Donationes mortis causa* (Revenue Act, 1845, s. 4).

(2) Every gift by any will or testamentary instrument of any person which by virtue of such will or instrument is payable out of the *personal or moveable estate* or effects of such person, or of which he had power to dispose, whether such gift shall be by way of annuity or in any other form (*ibid.*); and also the clear residue of the personal estate of any person, whether he dies leaving a will or dies intestate (Stamp Act, 1815, s. 2). This covers the ordinary personal property of which a person may die possessed, *i.e.*, his money, stocks, shares, securities for moneys, business assets, furniture and moveable property generally. Strictly speaking, personal property also includes leasehold property, but for Legacy Duty and Succession Duty purposes leasehold property is treated as real estate and by the S. D. A. 1853, ss. 1 and 19, was made liable to Succession Duty.

As has been noticed, Legacy Duty is also payable on real estate, including leaseholds, directed to be sold by the will of a person dying before 1st July, 1888. For example: *A*, who died in 1887, gave real estate to *B* for life and on

his death upon trust to sell, and the proceeds to his nephew *C*. *B* died in 1900. Legacy Duty became payable on the real estate directed to be sold. If, however, *A* the testator had died in 1890, Succession Duty and not Legacy Duty would have been payable. The distinction is not now very material, as the rates of Legacy Duty and Succession Duty in respect of property which has borne Estate Duty are the same.

(3) Real estate, which owing to certain rules of law has become impressed at the death of the deceased with the character of personal estate. Of such a kind is real estate belonging to a partnership which on the death of a partner passes as personal estate (Forbes *v.* Steven (1870), L. R. 10 Eq. 178; Stokes *v.* Ducroz, 38 W. R. 535).

Donationes mortis causa (as to which *see* page 21 *et seq.*) are expressly made liable to Legacy Duty (Revenue Act, 1845, s. 4) and are the only instance of Legacy Duty being payable otherwise than under a will or intestacy.

If a testator releases a recoverable debt due to him, Legacy Duty is payable on the debt by the debtor, as practically the release amounts to a gift by the testator to the debtor of the amount owed (A.-G. *v.* Holbrook, 3 Y. & J. 114). Interest on the duty is regarded as running from a year after the death, as in the case of an ordinary legacy.

A direction by a testator to pay the debts of another person is a gift to such person of the amounts owing and he is accordingly liable to pay duty. But if the debtor is absolutely insolvent, the direction is regarded as a legacy to the creditors, and they are liable to Legacy Duty (Foster *v.* Ley, 2 Bing. N. C. 269).

If a testator releases a debt owing from several persons, some of whom die before him, the release operates as a benefit to the survivors (A.-G. *v.* Holbrook, 3 Y. & J. 114).

Legacy Duty is still payable, even though a condition is attached to the legacy (A.-G. *v.* Sharpe (1890), 7 T. L. R. 558, and *re* Thorley ; Thorley *v.* Massam, [1891] 2 Ch. 613) except to the extent that the fulfilment of the condition is a pecuniary benefit to the estate (Sweeting *v.* Sweeting (1853), 22 L. J. 441). Thus, if *A* bequeaths £100 to *B* on condition that he pays £20 to *C*, Legacy Duty is presumably payable on £80 by *B* and on £20 by *C*. A gift to a creditor of an amount in excess of the debt due to him with a direction to the creditor to release such debt would render the creditor liable to Legacy Duty on such excess.

A gift to a person with a legal obligation to maintain other persons imposes a liability to Legacy Duty on the benefits to which the latter are entitled (*re* Harris (1852), 7 Ex. 344). Thus, where a testator gives his residuary estate to his widow with the obligation of maintaining his children, Legacy Duty would be payable on the benefits received by the children if the limits of value contemplated by the F. A. 1910, s. 58 (2), were exceeded.

A legacy or annuity to a person on condition that he maintains certain pet animals of the testator is treated as held in trust for the animals to the extent of the cost of their maintenance—and so far, is not liable to Legacy Duty—and in trust for the residuary legatees to the extent of what remains beyond the cost of maintenance. But where the gift is clearly to the person beneficially, subject to the condition of maintaining the animals, or where the knowledge that the person would maintain the animals was the motive of the gift, Legacy Duty is payable on the legacy or annuity as an absolute gift to such person without regard to the maintenance of the animals (*re* Dean (1889), 41 Ch. D. 552).

A mere provision for the maintenance of an animal so far as the legacy was so applied would not be liable to Legacy Duty.

Formerly a bequest by a testator domiciled in England for the saying of masses for the repose of the dead was treated as void, and therefore not liable to Legacy Duty and not deductible against the residuary estate. It was, however, decided by the House of Lords in the case of Bourne *v.* Keane, [1919] A.C. 815, that such bequests are legal. Legacy Duty is therefore chargeable as in the case of any other legacy, but if the bequest creates a perpetuity its legality will still be dependent upon whether it is to be regarded as charitable. If it is, it will be chargeable with Legacy Duty. In Ireland, charitable legacies are exempt from Legacy Duty, and it has been decided there that a bequest for masses in perpetuity is a good charitable gift, *see* page 283.

A direction in a will to pay the testator's debts does not, of course, create any liability to Legacy Duty, for in order to constitute a legacy it is essential that there should be an act of bounty on the part of the testator. This is so even if the recovery of the debts is barred by lapse of time, for it is open to the testator or his executor to pay them at any time (Williamson *v.* Naylor, 3 Y. & C. 208). But where the debts have been absolutely released or extinguished (as, for instance, where the testator had become bankrupt and obtained his certificate of discharge) Legacy Duty would be payable (Turner *v.* Martin, 7 De G. M. & G. 429).

A direction in a will that a gift is to be free of Estate Duty or Succession Duty constitutes a legacy where the duty would otherwise be a charge on the gift itself (*see* page 281). Similarly, a direction that an annuity is to be free of income tax confers a further benefit on the annuitant which is liable to Legacy Duty, and, unless an arrangement is come to with the Commissioners of Inland Revenue to

compound the duty by payment on the value for the life of the annuitant at an agreed fixed rate of tax, Legacy Duty is payable from time to time on the sums actually applied in payment of the tax (L. D. A. 1796, s. 11, and *see* Colville *v.* Inland Revenue Commissioners, [1923] S. C. 423).

Where a testator has in his lifetime covenanted to leave a certain share of his residuary estate to a person, Legacy Duty is none the less payable on his death (Jervis *v.* Wolferstan, L. R. 18 Eq. 18). It cannot be treated as a mere debt due from the estate, for the fact that he leaves a residuary estate out of which the covenant can be satisfied is to be regarded as an act of bounty, as he may if he chooses so dispose of his estate in his lifetime that there is no residue. It is otherwise where the covenant is to leave a specific or definite sum. In such a case a debt is created, as the covenantor binds himself to leave sufficient assets to satisfy the covenant (Eyre *v.* Monro, 26 L. J. Ch. 757). Succession Duty may, however, be payable.

Legacies to Executors.

Very often a legacy is given to an executor for his trouble in acting. It is liable to Legacy Duty, as the rule is that an executor cannot make any charge to recompense himself for his trouble in acting. So that a gift of this kind, although it may be inadequate to recompense the executor, has to be regarded as an act of bounty on the part of the testator (*re* Pooley, 40 Ch. D. 1).

In strictness, duty is also payable under the same principle where there is a direction in the will authorising the executor to charge professionally for what he does in connection with the estate (Thorley *v.* Massam, [1891] 2 Ch. 613). For example : where there is such a power to charge, an executor in business as an estate agent or auctioneer who acts as a valuer of the deceased's property or puts it up to auction is

liable to Legacy Duty on the amount of his fees. This is so even though the executor would be entitled to employ, at the expense of the estate, professional assistance to do the work actually performed by himself. The same rule would apply to a solicitor executor who acts in winding up an estate (*re* White; Pennell *v.* Franklin, [1898] 2 Ch. 217; and *re* Brown; Wace *v.* Smith, [1918] W. R. 118). The liability to duty does not, of course, extend to payments out of pocket. In practice, however, it is understood that claims for duty in these cases are not now pressed except where a fixed annual sum is given to the trustee for collecting and distributing the rents and income or otherwise managing a trust estate. Legacy Duty is then payable from time to time on the sums so received, and accounts should be rendered periodically showing the amounts received to date.

As has been pointed out above, personal property is only liable to Legacy Duty if the deceased owner was domiciled in this country. So that if a person is domiciled here all his personal estate is liable to Legacy Duty, including moveable or personal property abroad. The rule is that property of this nature follows the person of the owner and must be considered within the domicile of the owner, wherever that may be. The liability to Legacy Duty depends, therefore, entirely upon domicile and is quite independent of the actual situation of the property (Thomson *v.* Advocate-General, 12 Cl. & F. 1 and Ld. Adv. *v.* Jaffrey, [1921] 1 A. C. 146), so that if a deceased person dies domiciled abroad possessed of English Consols no Legacy Duty is payable in this country and, conversely, if a person domiciled in England is possessed of French Rentes, Legacy Duty is payable under his will (*re* Ewin, 1 Cr. & J. 151). (*See also* page 286 as to domicile.)

A legacy is only liable to duty under the will of the testator out of whose property it takes effect, so that where a testator bequeaths a sum to a legatee and directs that if the latter predeceases the testator the legacy shall be paid to the legatee's next-of-kin or to his executors or administrators, or to the persons who would be entitled if the legatee had died immediately after him, Legacy Duty is only payable under the testator's will, although in the last two instances the legacy in effect becomes part of the legatee's estate. The rule is that a legacy cannot be given to a person who is dead at the testator's death (Lord Advocate *v.* Bogie, [1894] A. C. 83) and the legacy is therefore treated as a direct benefit by the original testator to the legatee's next-of-kin or to the beneficiaries entitled under his will or intestacy, as the case may be. Where, however, the legacy is given to a person for life and then to his executors or administrators, Legacy Duty is payable, for the above rule does not apply, as the legatee was actually living at the death of the testator and the bequest in fact gives him an absolute interest in the legacy.

The case may, however, come under s. 33 of the Wills Act, 1837, which provides that legacies to children or other issue of the testator shall not lapse by the legatee's death in the testator's lifetime leaving issue, but shall take effect as if the legatee had died immediately after the testator. The legacy is thus made part of the legatee's personal estate and is liable as such to his debts. Legacy Duty may therefore be payable both under the will of the original testator and also under the will or intestacy of the deceased legatee (*re* Scott, [1901] 1 K. B. 228). It should, however, be borne in mind that Estate Duty is also payable in both estates, and where this is the case Legacy Duty would not be payable by lineal issue unless the taxable limits for the £1 per cent. rate were exceeded (*see* page 236 *et seq.*).

Where the deceased has a general power of appointment under a will, Legacy Duty is payable both under the will of the person creating the power and under the will of the person exercising it (L. D. A. 1796, s. 18, and *see re* Cholmondeley, 1 Cr. & M. 149, and Platt *v.* Routh, 6 M. & W. 756). Thus, if £1,000 is given by will to *A* for life and on his death as he shall by will appoint, and in default the legacy is given to other persons, Legacy Duty is in the first instance payable in respect of *A's* life interest, and on his exercising the power further Legacy Duty is payable on the *corpus* as if the legacy had been given to him absolutely, subject to an allowance in respect of the duty already paid. In addition to this, Legacy Duty is also payable under *A's* will by the person to whom he appoints the property.

Where the power of appointment is limited, enabling the donee only to appoint in favour of certain specified persons, the result is different. Legacy Duty is then only payable under the will of the person creating the power according to the relationship to him of the appointees, or, if the power is not exercised, according to the relationship of the persons entitled in default of appointment (Revenue Act, 1845, s. 4). The result is the same whether the power is exercised by will (A.-G. *v.* Pickard, 6 M. & W. 348) or by deed in the lifetime of the donee (Sweeting *v.* Sweeting, 22 L. J. 441).

Where the limited power is created by a deed Legacy Duty is not payable under the will of the person exercising such power ; Succession Duty may, however, be payable.

Where a legacy fails (as, for instance, if the legatee dies before the testator or if the legatee disclaims or refuses to accept the legacy), Legacy Duty is not, of course, payable on the legacy as such, but as it presumably would fall into residue it would bear Legacy Duty as forming a part thereof.

Where, however, a person is entitled to a legacy under the will of a person having a general power of appointment, and also (in default of appointment) under the will of the donor of the power, he cannot disclaim the legacy under the former will and elect to take under the latter will (A.-G. *v.* Brackenbury, 1 H. & C. 782).

Where the testator bequeaths the next presentation to a living, Legacy Duty is payable, such property being a chattel interest and forming part of the testator's personal estate. An advowson is real estate and is liable to Succession Duty (if and when sold).

In considering the liability to Legacy Duty, only the terms of the will should as a general rule be regarded, but if a legacy is given to *A* and a secret trust was constituted between him and the testator for the benefit of other persons, Legacy Duty, or in the alternative Succession Duty (*see* S. D. A. 1853, s. 8), is considered to be payable at a rate depending upon the relationship (if any) of the beneficiaries of the secret trust to the testator. In Cullen *v.* A.-G. for Ireland (1866), L. R. 1 H. L. 190, it was decided that the will alone was to be regarded and that Legacy Duty was payable as if the secret trust did not exist, but as that case was decided upon the Irish Stamp Acts, it is considered that the decision is distinguishable ; compare *re* Maddock ; Llewelyn *v.* Washington, [1902] 2 Ch. 220, and *re* Gardner ; Huey *v.* Cunnington, [1920] 2 Ch. 523.

As to the position where conflicting claims for Legacy Duty arise in Great Britain and in the Irish Free State, *see* page 321.

CHAPTER VIII

RATES AND AMOUNT OF LEGACY DUTY.

LEGACY Duty differs from Estate Duty in the fact that the rate of Legacy Duty does not depend on the amount of the estate but upon the relationship which the legatee bears to the testator or intestate.

The rates of Legacy Duty now payable (Stamp Act, 1815, s. 2 and Schedule, as amended by F. A. 1910, s. 58) are as under :—

Relationship of Legatee to Testator or Intestate.	Rate.
Husband or wife, children and their lineal descendants and the father or mother or any lineal ancestor, or the husband or wife of any such person	£1 per cent.
Brothers and sisters and their descendants or the husband or wife of any such person	£5 per cent.
Persons in any other degree of collateral consanguinity and strangers in blood to the deceased, including those related only by natural ties	£10 per cent.

As to the husband or wife of a relative, *see* page 244, *infra.*

As regards adopted children, it is provided by the Adoption of Children Act, 1926, which is to come into operation on the 1st January, 1927, that where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy, or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock (s. 5 (3)). This provision would only apply where the adoption is carried out in accordance with the formalities prescribed by the Act and its effect, so far as Death Duties are concerned, is to put the relationship of a child, adopted in accordance with the Act, to its adopting parent on the same footing as that of a child born in lawful wedlock. The Act does not apply to Scotland or Northern Ireland.

Relations of the husband or wife of the testator or intestate are chargeable with duty as strangers in blood unless they are themselves related in blood to the testator or intestate.

The £1 per cent. duty was in effect re-imposed by the F. A. 1910, but liberal exemptions are provided for : thus it is not payable—

(*a*) Where the principal value of the property passing on the death of the "*deceased*" in respect of which Estate Duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed

£15,000, whatever may be the value of the legacy or succession (F. A. 1910, s. 58 (2) (*a*), (3) and (4)).

The term "deceased" for the purpose of the section so far as it affects Legacy Duty, means the testator (including the person making a *donatio mortis causa*) or intestate, and the Act applies only to cases where the "deceased" died after its coming into operation, viz., on or after the 30th April, 1909 (sub-sections 3 and 4). As to the property to be taken into account for the purpose of the £15,000 limit, *see* observations in connection with Succession Duty on page 326. Similar principles apply in the case of Legacy Duty. Subject to certain exceptions, only property liable to Estate Duty in connection with the death in question need be considered. For example, suppose on *A's* death the following properties pass :—

	£
(1) His free estate, value	8,000
(2) Property settled by *A* on his marriage on himself for life, value	3,000
(3) Property settled by the will of *A's* uncle, who died in 1916, on *A* for life and on his death on *A's* nephew, value.. ..	5,000
(4) Property settled by the will of *B*, who died in 1907, on *A* for life and then on his children	4,000
Total ..	£20,000

Although the total exceeds £15,000, Nos. 3 and 4 have not to be taken into account because No. 3 passes on *A's* death outside his family, and he was never competent to dispose, and No. 4 may also be disregarded, for, as regards this property, *A* is not a "deceased" within the statutory meaning of that term as defined by sub-section 3 of s. 58 of the F. A. 1910. It follows that as Nos. 1 and 2 do not amount to £15,000 Legacy Duty at £1 per cent. is not payable by *A's* children under his will.

Once it has been determined that the £15,000 limit is not exceeded, the £1 per cent. Legacy Duty is not payable nor will any claim arise under the particular will on any subsequent death, even though on that death the property passing exceeds £15,000. Conversely, once it has been determined that the £15,000 limit is exceeded, liability to the £1 per cent. Legacy Duty attaches under the particular will—not only on the testator's death but also on the death of any life tenant even though the property then passing for Estate Duty does not exceed £15,000.

(*b*) The above provision determines generally whether the £1 per cent. Legacy Duty is chargeable, but a legatee may be relieved by reason of his *individual* benefit not amounting in value to a certain sum, even though the £15,000 limit is exceeded. For (1) where the amount or value of the legacy (which expression includes residue and share of residue) or succession, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed

£1,000, whatever may be the principal value of such property, Legacy Duty at £1 per cent. is not payable (F. A. 1910, s. 58 (2) (*b*)) and (2) where the beneficiary is the widow or a child under the age of twenty-one and the amount or value of the legacy or succession, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed £2,000, whatever may be the principal value of such property, Legacy Duty at £1 per cent. is not payable (F. A. 1910, s. 58 (2) (*c*)).

Assuming the £15,000 limit is exceeded, the test of exemption is the total *individual* benefit to the legatee, whether as a legacy, share of residue, or succession derived from the same testator or predecessor, so that if a child is given merely a life interest and the value according to the tables in the S. D. A. 1853, does not amount to £1,000 (or to £2,000 if he is under twenty-one) Legacy Duty is not payable, nor is it payable where the total benefit from two or more persons exceeds those sums but the value derived from each testator or predecessor is less than those sums.

It should be noted that the £1,000 limit applies to all legatees taxable at the £1 per cent. rate. The £2,000 limit, however, only applies to the widow and infant children. Infant grandchildren are not exempted if the benefit to them exceeds £1,000.

All legacies and successions derived from the same testator, intestate, or predecessor by the same beneficiary have to be taken into account, so that if furniture worth £1,000 is given by deceased's will to his widow and she also takes a life interest worth £1,500 in a fund under a settlement made by him, Legacy Duty is payable on the £1,000, and Succession Duty on the life interest, as together

they exceed £2,000 in value. But if the life interest had been derived from some other predecessor, the legacy would not be liable to the £1 per cent. duty, for the benefit taken by the widow from her husband would not then have exceeded £2,000.

If an immediate benefit under the taxable limit is given and the legatee takes a further benefit after the death of a life tenant, Legacy Duty is at once chargeable on the present benefit if the present value of the aggregate benefit exceeds £1,000. Duty on the future benefit may also be paid or payment may be postponed until it falls into possession. But if the present value of both does not exceed £1,000, duty is not immediately payable and interest is not chargeable until the benefit has amounted to £1,000. Thus, if *A* gives his son *B* an immediate legacy of £500 and a further sum of £3,000 on the death of his wife, Legacy Duty on the £500 must be paid at once as the present value of both benefits exceeds £1,000. Duty may also be paid at once on the present value of the legacy of £3,000 or payment may be deferred until it comes into possession.

Again, suppose *A* by will gives a legacy of £500 to each of his three children and the residue of his personal estate to his widow for life and on her death to his children as she by will appoints: Legacy Duty is not payable at the testator's death on the legacies as the present individual benefit does not amount to £1,000 and the widow may exercise the power in such a way that the total benefit of any child derived from the testator does not reach £1,000, and he is therefore exempt from duty. On the widow's death, however, Legacy Duty becomes payable on the legacies of £500 and on the shares of residue if the total benefit to each legatee exceeds £1,000. Duty may, however, be paid at once under discount on the

testator's death on the legacies on the understanding that it is to be repaid if it is subsequently found that the total benefit taken by any child did not reach the taxable limit.

When a fund or residue is settled on persons all liable to the same rate of duty, the £1 per cent. Legacy Duty should be accounted for in accordance with the rules given on page 257 *et seq.*

The £1 per cent. Legacy Duty as re-imposed by the F. A. 1910 is not payable under the will or intestacy of a person dying before the 30th April, 1909 (F. A. 1910, s. 58 (4)), under which Estate Duty has been paid and therefore where *A*, who died in 1900, by his will gave a legacy of £3,000 to his wife for life and on her death to his son *B* absolutely, Legacy Duty at £1 per cent. is not payable on the death of the widow after the passing of the F. A. 1910. A similar observation applies to the new £5 per cent. and £10 per cent. rates, so that where the testator or intestate died before the passing of the last mentioned Act the rates of duty formerly in force (*see* table on page 243 *infra*), apply. Neither the new £5 per cent. nor the £10 per cent. rate is, however, affected by the exemptions which apply to the £1 per cent. rate where the property passing does not exceed £15,000 or the total individual benefit does not exceed £1,000 or £2,000.

Exemption from £1 *per cent. Rate.*

As already stated, the Legacy Duty at £1 per cent. was in effect *reimposed* by the F. A. 1910. Subject thereto such duty is not payable in respect of any property which has been charged under the same will or intestacy with either (*a*) Probate Duty under the Customs and Inland Revenue Act, 1881 (s. 41 of that Act), or (*b*) Estate Duty

(F. A. 1894, s. 1, 1st Sched., para. 5.) Also before the F. A. 1910, no Legacy Duty was payable, in any circumstances, by the husband or wife of the testator or intestate.

One case which fails to benefit by these exemptions and still occasionally occurs may be exemplified. *A*, who died before the Customs and Inland Revenue Act, 1881, gave his personal estate to his widow *B* for life, with remainder to his children. On *B's* death in 1926 Legacy Duty at £1 per cent. is payable. The Probate Duty paid on *A's* personalty was not paid under the last mentioned Act, but it involves exemption from Estate Duty on *B's* death (F. A. 1894, s. 21 (1)). There is consequently nothing to displace the charge of Legacy Duty under the L. D. A. 1796, and the amending Acts. It makes no difference that *A's* estate may have been under £15,000, or that the benefit to each child may not exceed £1,000. These limits are applicable only to cases where the testator or intestate dies after the commencement of the F. A. 1910.

In the result, Legacy Duty at £1 per cent. is payable in three classes of case, viz.: (1) "pre-1881" testator —no Estate Duty subsequently paid under this Will; (2) "post-F. A. 1910" testator—limits of £15,000 and £1,000 or £2,000 exceeded; and (3) reversion falling into the estate of a "pre-1881" testator or intestate—Legacy Duty not having been paid on the reversionary value.

Where a testator makes a bequest to his wife and they are divorced before his death so that his marriage is in fact dissolved, Legacy Duty at £10 per cent. would be payable as between strangers in blood. This does not apply to any other legatee who, by marrying a relation of the testator before his death, becomes liable to a less rate of duty (S. D. A. 1853, s. 11). The fact that a divorce had taken place before the testator's death would not take away

from any such legatee the benefit of the lower rate of duty.

The rates of duty given in the foregoing table only apply where the testator or intestate died on or after the 30th April, 1909 (F. A. 1910, s. 58 (4)), so that if on the death of a tenant for life after that date Legacy Duty became payable on a settled fund under the will of a person dying before that date, the rates in force prior to the F. A. 1910 would apply. They are as follows :—

Relationship to the Testator or Intestate.	Rate.
Children and their lineal descendants, father or mother or any lineal ancestor, or the husband or wife of any such person .. (*This rate was not payable where Estate Duty had been paid, F. A.* 1894, *s.* 1, 1*st Schedule*, 5*th par.*)	£1 per cent.
Brothers and sisters and their descendants, or the husband or wife of any such person ..	£3 per cent.
Brothers and sisters of the father or mother and their descendants, or the husband or wife of any such person	£5 per cent.
Brothers and sisters of a grandfather or grandmother and their descendants, or the husband or wife of any such person ..	£6 per cent.
Persons in any other degree of relationship and strangers in blood, including persons related only by natural ties	£10 per cent

Thus if *A*, who died in 1898, gave a sum of £5,000 to his wife for life and on her death to his nephew *B* absolutely,

and the wife dies after the 30th April, 1909, Legacy Duty would be payable by *B* at £3 per cent. and not at £5 per cent.

The husband or wife of any relative of the testator or intestate is chargeable at the same rate as the person to whom he or she is married would have been liable (S. D. A. 1853, s. 11). For example: *A* gives a legacy of £50 to a stranger in blood, *B*, who has married *A's* niece. *B* is chargeable with Legacy Duty at £5 per cent., *i.e.*, the rate of duty his wife would have been liable to, and not £10 per cent. as a stranger in blood. For the purpose of Legacy Duty, a legatee who has married a relation of the testator stands in the same degree of consanguinity to the testator as the person whom he or she has married.

The marriage must, of course, have taken place before the claim for Legacy Duty arises by the death of the testator, and a stranger in blood legatee will not, by marrying a relation of the deceased after the death, obtain the right to pay at a lower rate; though having once gained the position of a relation by marriage before the death, he still retains it for Legacy Duty purposes even though his wife predeceases the testator or the marriage is dissolved by divorce before the testator's death.

In connection with the amount of Legacy Duty payable, the provisions of the F. A. 1914, s. 13 (2), as to estates exceeding £1,000 should be borne in mind. It ensures that the total sum payable for Legacy and Succession Duty on the free estate shall not exceed the amount by which the net value of such estate exceeds £1,000. (*See also* page 283.)

When Payable.

The right of the Crown to Legacy Duty arises on the death of the person under whose will or intestacy a benefit in personal estate is conferred, but the duty does not become payable until payment of the legacy or residue, or

until it is retained for the benefit of the legatees, or otherwise satisfied (L. D. A. 1796, s. 6). This provision allows the executors or accountable persons time to get in the estate and pay the debts and funeral and testamentary expenses. Thus the executors have a year in which to get in and administer the estate (A. E. A. 1925, s. 44), and unless there is a direction in the will that legacies are to carry interest they can pay them at any time within that period without interest, but if they pay any legacy before that period expires, Legacy Duty thereon becomes payable and accounts should be rendered to the Commissioners within twenty-one days after payment. If the account is delayed beyond this period, interest on the duty is chargeable from the date of payment of the legacy to the date when the account is rendered (Nisbett's Trustees *v.* Learmonth (1845), 8 Dunl. 69). But no interest is charged on the duty on ordinary legacies within one year from the death of the testator unless they are actually paid within that period and an account is not rendered within twenty-one days.

As the right to duty accrues at the death of the testator the Revenue is entitled not only to duty on the legacy or residue itself but also on all accretions, whether by way of interest, dividends, or otherwise, between the date of death and the time of payment or retainer (A.-G. *v.* Cavendish (1810), Wight. 82. and Thomas *v.* Montgomery, 3 Russ. 502), so that where the legatee is entitled to a legacy, together with interest or intermediate profits and accretions, the latter should be added to the legacy and duty tendered on the whole. Where the gift is specific its value at the date it is allotted, appropriated, or retained should be accounted for and not the value at the date of death, and intermediate dividends and accretions (if any) should be added. If a legacy is directed to be paid at the

expiration of two years without interest, Legacy Duty is not payable on the legacy until the expiration of that period, and no interest would in such case be chargeable. The intermediate income attributable to the legacy should, however, be included in the residuary account. It follows that if the legacy is directed to be paid at the expiration of three months from the death and is not paid until six months, interest for three months should be added to the legacy and duty tendered on the total sum.

Residuary Estate.

When the legacies have been paid and the estate realised, a general account showing what the residuary estate consists of should be rendered. This account should show the position of the estate at the date it is paid over or is retained upon trust, and such date is in practice taken as the date of the account. All unrealised assets should be accounted for at their value on such date and all intermediate profits and accretions and income should be included and, where necessary, apportioned up to the date of the account (A.-G. *v.* Cavendish (1810), Wight. 82, and Thomas *v.* Montgomery, 3 Russ. 502).

According to a recent decision, a residuary legatee absolutely entitled has a right to have the residue of the personal estate of the testator transferred and paid to him with any accrued income, when the personal estate has been fully administered by the executors, and the net residue ascertained, but until that time he has no property in any specified investment forming part of the estate or in the income of any such investment. And it was accordingly held that the residuary legatee, being a charity and not liable to income tax, was not entitled to repayment of the tax deducted from the income of the residuary estate between the date of death and the paying over of the ascertained residue to the charity (Dr. Barnardo's Homes *v.* Special

Commissioners, [1921] 2 A. C. 1). Subsequently, however, the F. A. 1922, s. 30, enacted that a charity in such circumstances should be entitled to treat the income accruing after the expiration of the first year from the testator's death as income of the charity, and accordingly it would be entitled to recover any income tax deducted from such income.

The residuary account should show in detail the amounts realised by such of the securities as have been sold. Those unsold, which are to be retained or are allotted to the beneficiaries in specie, should be brought in at their value at the date of the account or at the date when they are actually allotted. Government securities which have been taken over by the Revenue in payment of Estate Duty on the Inland Revenue Affidavit should be accounted for at the sum at which they were taken over, and not at their value at the date of the account. All other property which has been realised should be accounted for at the price realised, unsold property (including Government securities which it is intended to utilize in paying the Legacy Duty on the residuary account) being brought in at the value at the date of the account (L. D. A. 1796, s. 22). *Primâ facie*, the delivery of the residuary account implies that the executor has brought the administration to an end, and that he is going to hold the property thereafter as a trustee (*In re* Claremont, [1923] 2 K. B. 718). But this presumption can be rebutted not only in favour of the Crown, but also, though less easily, in favour of the subject. If, therefore, after the residuary account is rendered, but before the administration of the estate is in fact concluded, any property is realised for a sum in excess of or less than the estimate for Legacy Duty, further duty is payable or duty is returnable on the basis of the sale price (A.-G. *v.* Dardier, 11 Q. B. D. 16).

From the gross total of the estate should be deducted—(*a*) Estate Duty and Court fees ; (*b*) Funeral expenses ; (*c*) Debts ; (*d*) Testamentary expenses such as solicitor's costs, costs of sale, and general expenses of realising and getting in and dividing the estate ; (*e*) Legacies, and, where legacies are given free of duty, the Legacy Duty thereon.

Deduction may also be taken in respect of a tombstone or memorial which the testator has directed to be provided out of his estate. But where such a direction is in its nature charitable (Hoare *v.* Osborne, L. R. 1 Eq. 585), as where it enures for the benefit or ornamentation of a church (for instance, provision for a memorial window or for the repair of a monument in the church), Legacy Duty is payable on the amount so appropriated, which may be deducted in the residuary account after the duty has been accounted for on a separate receipt.

The balance represents the residuary estate, but, as already pointed out, to this should be added all income, profits, rents, and accretions which have accrued to the estate or which it has been capable of earning from the date of death up to the date of the account. Thus, dividends on securities, bank interest, rents of leaseholds and real estate directed to be sold where the proceeds are included in the account, and profits of business up to the date of winding up, after deducting all proper expenses of carrying on the same, should be accounted for. Duty is then assessed on the aggregate total without interest, but if considerable delay occurs between the date of the account when the residue is presumably paid over to the beneficiaries or retained for their benefit and the date when the account is brought in for assessment, interest on the duty is chargeable as the duty becomes in arrear from the date of payment or retainer.

It may be pointed out that under the A. E. A. 1925, s. 35, personal estate subject to a charge or lien is now, like real

estate, primarily liable for payment of such charge or lien in the absence of an express direction to the contrary. A general direction for payment of debts out of residue or a charge thereon of such debts is not a sufficient expression. If, therefore, a specific bequest is subject to a lien for unpaid purchase money or to a charge for an overdraft the legatee must make repayment and cannot look to the residuary estate unless there is an express direction in the will that the bequest is to be taken free from such lien or charge.

As to the apportionment between capital and income, where a residuary estate is settled, of the payments made by the executors in the course of administration, the rule seems to be that the tenant for life should be deprived of the income of such a sum as with interest (at the average rate of the estate) from the date of death to the date or dates of payment was sufficient to satisfy the payments (Allhusen *v.* Whittell (1867), L. R. 4 Eq. 295 ; *re* McEuen ; McEuen *v.* Phelps, [1913] 2 Ch. 704, and *re* Wills ; Wills *v.* Hamilton, [1915] 1 Ch. 769).

It will be observed that the values for the purposes of Estate Duty and for Legacy Duty are distinct. That for Estate Duty is the value on the day of the testator's death, while the value for Legacy Duty is, strictly speaking, the value of the estate at the time it is paid over to or retained for the benefit of the legatees, or, in practice, its value at the date of the account with all intermediate accretions.

Legacy Duty on Death of a Life Tenant.

Where Legacy Duty becomes payable on the death of a previous limited owner, the claim for Legacy Duty may generally be regarded not only as accruing at such date but as also payable at the same time, for the estate has already been got in and realised and no considerable time is therefore required in order to ascertain the property on

which duty is payable. The value for Legacy Duty may therefore be ascertained on the day when the limited owner dies and the account should not include any income earned between that day and the date when the account is actually delivered, but interest at £4 per cent. is charged on the duty from the date of death of the limited owner to the date of rendering the account. For instance : *A* by will gives his residuary personal estate to his wife for life and on her death to his nephew *B* absolutely. As the wife is not liable to Legacy Duty (unless the £15,000 limit is exceeded) a residuary account is not required on *A's* death, but on the death of the wife Legacy Duty becomes payable at that date on the value of the investments then representing the trust estate, and interest on the duty is payable from that date to the date of delivery of the account. In strictness, in these cases the account should give particulars of the estate at the time it was retained in trust for the widow showing the realisation of the estate, the payments made thereout, and the investments made by the trustees, but as a rule in ordinary cases it is sufficient to show the investments representing the trust estate at the death of the life tenant. If there is a considerable discrepancy between their value and the value of the estate at the testator's death an explanation in the form of a short history of the settled fund should be furnished.

If further Estate Duty becomes payable on the death of the life tenant in consequence of the F. A. 1914, s. 14, it may be deducted, as it constitutes a charge on the settled property.

Legacies given free of Duty.

Where there is a direction that any particular legacy or legacies is or are to be free of Legacy Duty, no duty is to be charged upon the money applied for the payment of such

duty (L. D. A. 1796, s. 21) notwithstanding that the same may be deemed a legacy to the legatees, and the amount of the Legacy Duty may be deducted in the residuary account.

Any words indicating an intention on the part of a testator that the legatee shall receive his legacy without any deduction for duty are sufficient. Thus, "free of duty," "free from all duties," "without deduction" (Barksdale *v.* Gilliatt, 1 Swan. 562), "clear of all deductions" (Dawkins *v.* Tatham, 2 Sim. 492), or "expenses" (Gosden *v.* Dotterill, 1 My. & K. 56), "clear of all taxes and outgoings" (Louch *v.* Peters, 1 My. & K. 489), "clear" (Ford *v.* Ruxton, 1 Coll. 403), and "free."

But a direction to invest a sum sufficient to produce a *clear* yearly income does not exonerate the fund from duty where it is given in succession to persons liable to different rates of duty (Sanders *v.* Kiddell, 7 Sim. 536). A direction that a specific bequest is to be free of Legacy Duty does not cover French Mutation Duty (*re* Scott ; Scott *v.* Scott, [1915] 1 Ch. 592).

A direction to pay the duty on all legacies includes legacies given by a subsequent codicil (Byne *v.* Currey, 2 Cr. & M. 603) and a similar direction as to a legacy given by the will covers any legacy which may be substituted for it by a codicil (Cooper *v.* Day, 3 Mer. 154), unless the substituted legacy is substantially a distinct bequest (Burrows *v.* Cottrell, 3 Sim. 375).

The provision that money directed to be applied in payment of Legacy Duty is not liable to Legacy Duty does not apply to money directed to be applied in payment of other duties. Therefore, where leaseholds are bequeathed free of Succession Duty or real estate is devised free of Estate Duty and Succession Duty, the direction in the will is regarded as a legacy of the amount of such duties, and

as such is taxable with Legacy Duty. Similarly, where the deceased makes a gift *inter vivos* within three years of death, and by his will directs any duties thereon to be paid out of his personal estate, Legacy Duty is payable under his will on the amount of such duties as a legacy to the donee. Deduction may then be taken in the residuary account in respect of any such duties. In connection with legacies of this type reference may be made to the definition of pecuniary legacy in the A. E. A. 1925, s. 55 (1) (ix).

A direction that legacies payable out of personal estate are to be free of duty does not apply to Estate Duty, as that duty does not form a charge on the personal estate and is not therefore deducted from any such legacies unless there is an express direction in the will that it shall be (*cf. re* Morrison ; Morrison *v.* Morrison (1910), 102 L. T. 530). The Estate Duty on the whole personal estate, including leaseholds, is, in the absence of special directions, deducted against the residue in the residuary account, but where a legacy is settled and, on the death of a life tenant a second Estate Duty becomes payable in consequence of the F. A. 1914, s. 14, the duty would be a charge on the legacy and payable thereout subject to any direction to the contrary in the will, as to which and the decisions thereon *see* page 145.

A residuary estate itself cannot be given free of duty, for obviously the duty can but be paid out of the residuary estate itself (Lord Londesborough *v.* Somerville, 19 Beav. 295), but a life or other interest carved out of residue may, it seems, be given free of Legacy Duty (*re* Kennedy ; Corbould *v.* Kennedy, [1917] 1 Ch. 9). Where the legacies are given free of duty, but the estate is insufficient to pay them in full, the duty must, of course, be paid out of the legacies (Lord Advocate *v.* Miller's Trustees (1884), 21 S. L. R. 709 ; and *re* Turnbull ; Skipper *v.* Wade, [1905] 1 Ch. 726).

The method to be adopted when an estate is deficient and the legacies or some of them are given duty free is explained on pages 281 and 282.

Compromise.

Where a legacy or residue is satisfied otherwise than by payment of money or appropriation of specific effects or is released or compounded for less than the value thereof, then the duty is to be paid on the value of the property taken in satisfaction or in consideration of the release or composition for the same (L. D. A. 1796, s. 23, and *see* Lord Advocate *v.* Watherston's Trustee, 3 Fra. 627, and Lord Advocate *v.* Macrae, 31 S. L. R. 637 (also reported *sub nom.*, Lord Advocate *v.* Freckleton's Judicial Factor (1894), 21 Rett. 743)). This provision applies to *bonâ fide* compromises under wills of doubtful construction, or where the testamentary disposition is impeached on the ground of undue influence or otherwise, or where competing testamentary dispositions are propounded. In these cases Legacy Duty is payable in accordance with the actual division of the estate under the will as varied under the compromise and admitted to probate. It is immaterial whether the compromise is sanctioned by the Court or not, provided there is no reason to suspect its *bona fides* (Lord Advocate *v.* Macrae, *supra*). If a legacy is compounded for and no arrangement is made as to the duty thereon, such duty will be a deduction against the sum payable to the legatee (Fischer *v.* Earl of Seafield (1825), S. R. R. 1 S., 685). If the legal title is a grant of administration, s. 23 is not considered to apply, so that where a grant of probate is revoked or where no will is proved (*e.g.*, where a will is declared by the Court to have been revoked and therefore not proveable) compromises are to be disregarded so far as the liability to Legacy Duty is concerned, and duty is chargeable at the rate payable by

the next-of-kin under the intestacy (L. D. A. 1796, s. 37 ; The Queen *v.* Commissioners of Stamps and Taxes (1844), 6 Q. B. 657).

If a legatee disclaims his legacy or does not require interest on it where he has become entitled to interest, duty is not payable on the legacy or interest as such : but they would be chargeable as forming part of residue.

Where the testator directs his estate to be accumulated for a period and then divided among legatees, duty is payable on both the property itself and the accumulations at the date of division (Advocate-General *v.* Oswald (1848), 10 Dun. 969).

Reversions.

Where a reversionary interest is given as a legacy or is included in a residuary estate liable to Legacy Duty, the executors are not bound to pay the duty until it falls into possession. For instance : £500 is given to *A* for life and on his death to *C*. If *C* dies before *A*, Legacy Duty is not immediately payable under his will on his death, but his executors can wait until the death of *A*, when they would, of course, pay duty on the full £500 or the value of the investments representing it. In many cases, however, in order to dispose of all claims for duty, the executors prefer to pay duty at once and, assuming that the life tenant is in ordinarily good health, this course is acquiesced in by the Commissioners. The value in such cases is ascertained by taking the value of the fund as if in possession and deducting from it the value of the life tenant's interest, which may be calculated according to the tables in the S. D. A. 1853.

If payment on a reversionary interest is not made when the residuary account is rendered, and afterwards, owing to changes or other circumstances, the executors wish to

dispose of the outstanding claim before the reversion falls in, the duty would only be accepted on the basis of a commutation (Customs and Inland Revenue Act, 1880, s. 11, and Customs and Inland Revenue Act, 1881, s. 43). If the commutation were agreed to, duty would be assessed on the fund at its value in possession and discounted for the life of the life tenant.

If the interest is to fall in on the death or re-marriage of the life tenant or on some other event, only a proportion of the allowance in respect of the life interest is made (*see* page 213 as to Estate Duty).

Apart from the question of commuting Legacy Duty in respect of interests in expectancy, the Commissioners have a general power of compounding all claims for Legacy Duty, whether present or future, in consideration of a single payment (Customs and Inland Revenue Act 1881, s. 43). And in cases of difficulty or complication they are empowered to compound all claims for Death Duties and to accept payment of such sum as, having regard to the circumstances, seems proper in full discharge of all claims (F. A. 1894, s. 13). They may also, if they think fit, remit any duty unpaid after twenty years or any interest thereon (F. A. 1894, s. 8 (11), as extended by F. A. 1907, s. 13). They have also a general power to remit interest at any time where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account (F. A. 1896, s. 18 (3)).

Annuities.

Where a legacy or residue is given by way of annuity, whether payable annually or otherwise, for any life or lives or for years determinable on any life or lives, or for years or other period of time, the value of the benefit taxable with Legacy Duty is as a general rule calculated in accord-

ance with the tables given in the S. D. A. 1853, based upon the period for which the benefit is expected to endure (L. D. A. 1796, s. 8).

Examples of the different kinds of bequests are given below :

(1) An annual sum or annuity *simpliciter*, payable for the legatee's life ; or

(2) A capital sum of a certain amount with a direction to the executors to purchase an annuity with it ; or

(3) An annuity of a certain amount with a direction to the executors to purchase same ; or

(4) An annuity to a person charged on a legacy given to some other person ; or

(5) A legacy or residue to a person for life and then to other persons liable (*a*) to the same rate of duty, or (*b*) to different rates of duty.

In the first case, the annuity is payable out of the residuary estate and duty is assessed on the value of the same for the life of the annuitant calculated according to the tables in the S. D. A. 1853. This duty may be paid by four equal payments, the first being due before or on completing the payment of the first year's annuity, or the whole duty may be paid at once under discount (L. D. A. 1796, s. 8, and S. D. A. 1853, s. 40). If the annuity determines by death or any other contingency (as, for instance, re-marriage or bankruptcy) before the expiration of the four years the instalments of duty which have not become due cease to be payable (s. 8, *supra*).

In the second case, Legacy Duty is payable on the full sum mentioned in the will, as such a bequest vests the sum in the annuitant so that if he dies before the annuity is purchased his executors are entitled to have the sum paid to his estate (Barnes *v.* Rowley, 3 Ves. Jun. 305)

In the third case, Legacy Duty is payable on the value of the annuity according to the tables without regard to the sum spent in purchasing the annuity (L. D. A. 1796, s. 10). The duty is payable in full and not by instalments, and if the annuitant dies before the purchase is made his representatives can obtain payment of the sum required for the purchase (Dawson *v.* Hearn, 1 R. & M. 606). Where the annuity is purchased, the sum actually paid may be deducted in the residuary account, although it may be greater than the value according to the table in the S. D. A. 1853. The annuity before purchase, unless given free of duty, has to be reduced in proportion to the amount of duty payable thereon, and such reduction is to be calculated in the same manner as the duty (L. D. A. 1796, s. 10). Thus, if the annuity is £100 and the rate of duty £5 per cent., the annuity to be purchased would be £95.

In the fourth case, Legacy Duty is payable on the value of the annuity as in case (1), but is made payable by the person entitled to the legacy charged, and he is entitled to retain the payments made by him out of the first four years' payments of the annuity (L. D. A. 1796, s. 9). The duty on his legacy is paid on the balance remaining after the value of the annuity is deducted, so that no further Legacy Duty becomes payable on the determination of the annuity.

Legacies in Equal Rate.

In the fifth case, where *all* the persons entitled are liable to the same rate of duty, Legacy Duty is payable on the *corpus* as in the case of a gift to a person absolutely (L. D. A. 1796, s. 12). But where the life tenant is liable to one rate of duty and those entitled on his death to another rate, Legacy Duty is payable on the value of the legacy or residue for the life of the life tenant, and on his death

Legacy Duty is again payable : viz., on the *corpus* of the legacy or residue at such date, less any further Estate Duty payable in consequence of the F. A. 1914, s. 14.

Thus, where a fund is settled and all the beneficiaries, present and future, are liable to the same rate of Legacy Duty, the duty may be cleared by one payment, and however many limited owners there may be, no further Legacy Duty will be payable on their respective deaths. For instance: *A* by will gives a legacy or share of residue to his nephew *B* for life, and on his death to *B's* children. As *B* and his children are liable to the same rate of duty, Legacy Duty is payable at once on the capital value of the bequest just as if it were an absolute gift to *B*, and on *B's* death no further Legacy Duty is payable by his children. The duty is payable by the executors or trustees out of the *corpus* of the fund, which is thus reduced to that extent (L. D. A. 1796, s. 13).

Similarly, if *A's* wife were given the first life interest, Legacy Duty would be payable on the capital value on her death. If, instead of *A's* wife being given a life interest the first life interest were given to *A's* cousin, *C*, Legacy Duty would be payable on the value of *C's* life interest at £10 per cent. and on his death further duty at the rate of £5 per cent. would be payable on the *corpus*. In this instance *C* is liable to a higher rate of duty than *B* and his children, and the duty cannot therefore be taken on the capital until the death of *C*. The duty on *C's* life interest is payable out of the income of the fund, and the tenant for life and the trustees who pay him the income are the only persons accountable, and in the event of the duty not being paid, the Revenue has no right to have the duty paid out of the *corpus* (*ibid.*, and Bowra *v.* Rhodes, 10 W. R. 747).

Where an annuity as distinguished from the income of a fund is given to one legatee and the fund itself is given,

subject to the annuity, to another legatee liable to the same rate of duty, payment of Legacy Duty on the *corpus* of the fund cannot be enforced and the duty on the annuity may be accounted for by way of annuity and paid by four yearly instalments (Crow *v.* Robinson, 4 De G. F. & J. 337).

Where a legacy is given to a person for life and on his death to a contingent class liable to the same rate of duty, and in the event of the failure of such class there is an intestacy under which the next-of-kin, who would be liable to a *lower* rate of duty, would take, it is not open to the executors to dispose of the claim for Legacy Duty by accounting for duty on the *corpus* at the higher rate. Though the Commissioners of Inland Revenue might not object to accept duty on that basis, they would apparently have no authority to return duty in the event of the failure of the contingent class. The proper course is, therefore, to account for Legacy Duty in the first instance on the life interest, and on the death of the life tenant on the *corpus* at the rate chargeable according to the circumstances then existing (*in re* Duppa; Fowler *v.* Duppa, [1912] 2 Ch. 445).

Contingent Legacies.

Where a legacy or residue not chargeable by way of annuity is given subject to a contingency which may defeat such gift and on the happening of which a higher rate of duty will become chargeable, duty is to be paid on the legacy or residue as an absolute bequest without regard to the contingency (L. D. A. 1796, s. 17). But if the contingency happens, and the legacy goes to a person liable to a higher rate of duty, the difference between the duty so paid and the higher rate of duty would then be payable (*ibid.*).

In cases of this kind the value of the legacy for the purpose of taking the higher rate is its value at the happening of the contingency, and an allowance of the duty paid is made by deducting from the value such a capital sum as the duty already paid is sufficient at the higher rate to release. Thus, if a legacy of £1,000 is given to a nephew, *B*, absolutely and in the event of his dying under twenty-one without issue to a cousin, *C*, Legacy Duty is paid in the first instance on £1,000 at £5 per cent. *B* dies without issue, and, owing to depreciation in investments, the value of the legacy has fallen to £900. The duty already paid, viz., £50, is sufficient at £10 per cent. to release £500 of the above value, leaving duty at £10 per cent. on the balance of £400, viz. £40 to be paid.

Where the value of any benefit given by will can only be ascertained from time to time by the actual application of the fund allotted for the purpose, or where by reason of the form and manner of the gift the amount or value of the benefit cannot be ascertained so that duty can be taken in the ordinary way, the duty is to be charged upon the sums of money or effects which shall be applied from time to time as separate and distinct legacies (L. D. A. 1796, s. 11). Thus, *A* by will bequeaths a legacy to an infant legatee on his attaining twenty-one, with a direction that such part of the income as may be required is to be applied for his maintenance. Legacy Duty is to be accounted for periodically on the sums so applied (A.-G. *v.* Wade, [1910] 1 K. B. 703). When *A* attains twenty-one, duty will become payable upon the capital together with any accumulations of income. So also where trustees are given a percentage on trust income during the period they act as trustees, Legacy Duty is payable from time to time on the actual sums received by them, and periodical accounts should be

rendered. And where an annuity is bequeathed free of income tax, Legacy Duty is payable periodically on the amounts actually paid for income tax according to the rate of tax for the time being chargeable. As to the incidence of Legacy Duty on legacies of this kind, *see* Colville *v.* Inland Revenue Commissioners, [1923] S. C. 423.

Duty Payable by way of Annuity.

As already explained, where Legacy Duty is payable by way of annuity it may, at the option of the parties accountable, be paid at once under discount, or by four equal payments, the first of which is to be made before or on completion of the first year's annuity and the others successively on completing payment of the three subsequent years' annuity.

This provision prevents the duty falling too heavily on the annuitant or life tenant out of whose annuity or yearly income it is payable. Moreover, where an annuitant or life tenant dies before all the four payments have become due and payable the remainder cease to be payable, and if in such case the duty has been paid in full under discount, a return of the proportion of instalments which would not have become due and payable at the death of the annuitant could be claimed (L. D. A., 1796, ss. 8 and 12).

Where the residue is given on trust to sell with power to postpone, the annuity or income it produces should be ascertained as follows :—

(*a*) If a sale has taken place and the proceeds have been invested before the first instalment of Legacy Duty becomes due, the actual income of the investments should be accounted for.

(*b*) But if there has been no sale or if a sale has taken place but the proceeds have not been

invested, the income should be calculated according to the current rate which trustee securities would produce (£4¾ per cent. at present).

Where there is only a power to sell or no direction at all, the income should be ascertained as at (*a*) above if the property has been sold and the proceeds invested before the first instalment of duty is due, but if the property is held in specie, the actual income for the year preceding the date when the first instalment becomes due should as a general rule be taken as the basis of the account.

Where an annuity is given subject to contingency, the duty is calculated in the first instance without regard to the contingency, and if the annuity subsequently determines upon the contingency other than the death of the annuitant, all payments which would have become due after the happening of such contingency cease to be payable and the persons paying the duty may apply for a return of so much of the duty paid as will reduce it to the duty which would have been payable for such annuity if calculated according to the period for which the same shall have actually endured (L. D. A. 1796, s. 8).

For instance, where an annuity or legacy or residue is given to a person for life or until he or she marries again, or to a man for life or until he becomes bankrupt or attempts to alienate his interest, duty is taken in the first instance on the value of the life interest by way of annuity. Then, if the contingency happens, the duty may, on application, be readjusted to fit the period for which the benefit actually endured.

Where duty is payable by way of annuity on an annuity for which capital is directed to be set apart, or a legacy or a share of residue, the proper course is for the accountable parties to deduct the capital set apart, the legacy or share of

residue in their residuary account, and pay the Legacy Duty on the annuity or life interest on separate forms (No. 2). On the death of the annuitant or life tenant, further duty will become payable on the then value of the capital set apart, legacy, or share of residue, less any further Estate Duty payable in consequence of the F. A. 1914, s. 14. But it is open to the Commissioners to close the matter at once by allowing the parties to "set a value" (L. D. A., s. 22) on the annuity fund, legacy or share of residue, by deducting merely the value of the annuity or life interest according to the tables in the S. D. A., and if this is done, the death of the annuitant or life tenant will not give rise to any further claim for Legacy Duty. Such deductions would not be allowed where the annuitant or life tenant was in precarious health or where the deduction entirely exhausted the residuary estate. If in such a case an annuity is given free of duty, it would be necessary to revise the deduction in the residuary account (both for the annuity and the duty thereon) should the death of the annuitant within four years lead to an adjustment of the duty on the annuity, and the deduction in the first instance of the value of the annuity in the residuary account would only be allowed on this understanding.

Where personal estate is directed to be invested in real estate, it is liable to Legacy Duty as personal estate unless it is given to different persons in succession (L. D. A. 1796, s. 19). In the latter case, each person is to pay Legacy Duty in the same way as if there had been no direction to invest in real estate, unless the property has been actually applied in purchasing real estate (De Lancey *v.* Inland Revenue Commissioners, L.R. 5 Ex. 102). If it has, Legacy Duty is not payable, but the property becomes liable to Succession Duty instead (S. D. A. 1853, s. 30).

Estates *pur autre vie* are liable to Legacy Duty as personal estate (L. D. A. 1796, s. 20). An estate *pur autre vie* arises where real estate is held by one person during the life of another person. It was formerly thought that where such an estate, on the death of the owner, vested in his heir or devisee as special occupant it became liable to Succession Duty and not Legacy Duty. Now, however, devolution by special occupancy has been abolished by A. E. A. 1925, s. 45 (1) (*a*), and such estates in all cases devolve upon the personal representative and are liable to Legacy Duty (*cf.* Chatfield *v.* Berchtoldt, L. R. 7 Ch. App. 192).

CHAPTER IX.

THE PERSONS ACCOUNTABLE FOR LEGACY DUTY.

THE executors under a will or the administrator under an intestacy are primarily liable to account for and pay Legacy Duty on retainer for their own benefit of any legacy or the residue of any personal estate or share thereof, and also on delivery, payment, or other satisfaction or discharge of any legacy, residue of personal estate, or share thereof, to which any other person shall be entitled (L. D. A. 1796, s. 6.)

Thus the time for payment of the duty arises—(*a*) When the executors are themselves the beneficiaries, upon retainer of the legacy or residue for their own benefit: (*b*) When other persons are the beneficiaries, upon the executors either retaining the property for the benefit of such other persons (as where the property is given in trust) or upon delivery, payment, or other satisfaction or discharge of the legacy or residue, so that if a legatee disclaims his legacy no duty is payable, as the legacy will not have been paid, satisfied, or discharged.

An actual payment of the legacy is not essential. No money may pass, but the legacy may still be satisfied or discharged, and Legacy Duty is therefore payable (A.-G. *v.* Holford, 1 Pri. 427, and A.-G. *v.* Metcalfe, 6 Ex. 26).

When Legatee Liable.

If the executors have retained a legacy or residue for their own benefit without having paid the duty, or have paid or satisfied a legacy or residue to which other persons are entitled, having received or deducted the duty, and the duty

has not been duly paid to the Revenue, the same is to be a personal debt due from such executors to the Crown (L. D. A. 1796, s. 6). If, however, they have paid or satisfied the legacy or residue without having received or deducted the duty, then such duty is a debt due from them and from the *legatee* as well (*ibid.*).

Besides executors or administrators in the ordinary sense, trustees to whom a settled legacy is paid, or in whom it is vested under the terms of the will (L. D. A. 1796, s. 13), and even persons who act wrongfully in administering the estate (*see* A.-G. *v.* New York Breweries Co., [1899] A. C. 62 and A. E. A. 1925, s. 55 (1) (xi)), are made liable for the duty. As a general rule, the duty should be deducted by the executors from the legacy before payment over, or if the legacy is specific and handed over in specie, the duty should be received by them from the legatee before delivery or handing over.

It will be observed that even though the executors have parted with the property without deducting or receiving the duty, they are still liable to the Crown, but the legatee is, in such case, also accountable. If the executors, being the persons primarily accountable, are called upon to pay any sums on account of duty, they are entitled to be reimbursed by the legatee (Foster *v.* Ley, 2 Bing. N. C. 269). This right extends not only to the duty on a legacy itself but also to duty paid on accretions to the legacy up to the date of payment (Bate *v.* Payne (1849), 13 Q. B. 900); and also to Legacy Duty not paid in respect of an annuity until after the last instalment of duty had become due, with the result that the annuitant had been paid the annuity without any deduction for duty (Hales *v.* Freeman (1819), 1 Brod. and B. 391). Where a legatee has sold his legacy, the purchaser is under the same liability as the legatee, and if the

legacy has been paid by the executors in full, the purchaser must reimburse the latter any sums they may be called upon to pay for Legacy Duty (Nisbett's Trustees *v.* Learmonth, 8 Dunl. (Court of Sess., 69).

There are, however, certain exceptions or modifications of the rule as to the liability of executors and administrators. Thus—(1) Where a legacy is given subject to an annuity to another person, the legatee is liable for the duty on the annuity (L. D. A. 1796, s. 9). In such cases the legatee is entitled before paying over the first four yearly instalments of the annuity to the annuitant to deduct from each instalment one-fourth of the duty payable in respect of the annuity (*ibid.*). The Legacy Duty on the legacy so charged is to be calculated on its value after deducting the value of the annuity. The section only applies where a legacy is given to one person charged with an annuity to another person to whom there is no direct gift. If therefore the legacy were given to trustees upon trust to pay the annuity and subject thereto for the benefit of the legatee, such trustees would be the persons primarily liable for the duty and they should deduct the proper proportion thereof against each beneficiary. (2) Where articles of furniture, plate, or other things not yielding any income, are given to be enjoyed by different persons in succession, Legacy Duty is not payable until the property comes into the hands of a person competent to dispose or who actually sells or converts it into money or property producing income, and the executors are quite justified in handing over such articles to the tenant for life without providing for the future claim for duty which is accordingly primarily payable by the person who becomes competent to dispose of the property, or who actually sells it, whether he is entitled to do so or not (L. D. A. 1796, s. 14, and A.-G. *v.* Bruce, [1901] 2 K. B. 391). Where any such articles are bequeathed as

heirlooms with settled estates and are subsequently resettled, the period of exemption from Legacy Duty expires on the death of the original tenant for life and Legacy Duty becomes payable as on that date and upon the then value of the heirlooms (A.-G. *v.* Bruce, *supra*). Somewhat similar remarks apply to chattels certified by the Treasury to be of national, scientific, historic, or artistic interest, which, whether settled or not, are exempted from duty until sold (F. A. 1910, s. 63, extending F. A. 1896, s. 20, and F. A. 1910, s. 96 (1), 6th Schedule). On a sale taking place (unless the sale is to the excepted bodies mentioned on page 79, *supra*, in which case absolute exemption is given by the (F. A. 1921, s. 44). Legacy Duty becomes payable, in the absence of any direction in the will, on the amount realised by the person for whose benefit the sale is made and the duty, if unpaid, becomes the debt of such person (*re* Scott ; Scott *v.* Scott, [1916] 2 Ch. 268. (3) Where a legacy or residue is given so that different persons become entitled in succession, the executors are accountable for duty on the *corpus* where all the beneficiaries are liable to the same rate of duty. But where duty is chargeable at different rates, the executors are absolved from liability after they have accounted for the duty immediately payable and handed over the fund to the trustees of the will (L. D. A. 1796, s. 13). In such case the trustees, including any new or substituted trustees, are accountable for the duties subsequently payable (*re* Jones's Trust (1852), 21 L. J. Ch. 566). For instance : suppose £500 is given to *A* for life and on his death to *B*, and *A* and *B* are liable to different rates of duty ; the executors, after accounting for the duty on *A's* interest and handing the legacy over to the trustees, are absolved from further liability and on the death of *A* the trustees are liable to account for the duty then payable. (4) Where a legacy, not chargeable by way of annuity, is given subject to a

contingency, duty is chargeable as on an absolute bequest, but if the contingency happens and the legacy goes to a person liable to a higher rate of duty, he is accountable for the difference between the duty originally paid and the higher rate of duty (L. D. A. 1796, s. 17).

The reason for these exceptions is that the executors' duty is to get in the testator's estate, pay his debts, and finally distribute the estate or retain it upon trust, and they could not safely do this if they were liable to indefinite claims for duties payable at some future date.

Unlike Succession Duty, Legacy Duty is payable on each devolution of a legacy or residue although the beneficiary may not have lived to enjoy the property (A.-G. *v.* Malkin, 2 Phil. 64 ; A.-G. *v.* Maxwell, 10 Ir. C. L. R. 262 ; and A.-G. *v.* Cleave, 31 L. T. (N. S.) 86). Thus, to take an extreme case, *A* by will gives £5,000 to *B* for life and on his death to *C* absolutely. *C* predeceases *B*, having bequeathed the fund to *D*. *D* also predeceases *B*, without leaving a will, and the fund passes to *E*, his next-of-kin. Legacy Duty is payable on each devolution (unless it comes within one or other of the exemptions from Legacy Duty). Thus *A's* trustees after paying the Legacy Duty which arose on the death of *B* under *A's* will can safely hand over the balance of the fund to the executors of *C*, who are liable to account for the Legacy Duty payable under his will. *C's* executors then hand over the balance to the duly constituted personal representatives of *D*, who in their turn are liable to account for the Legacy Duty under his intestacy. If, however, *A's* trustees handed the fund to *E* direct they would render themselves liable, as executors *de son tort* of the estates of *C* and *D*, to the Legacy Duty payable on each devolution (A.-G. *v.* New York Breweries Co., [1899] A. C. 62).

Where, under a deed, a person has and exercises a general power of appointment by will over a fund, the executors of

his will, and not the trustees of the settlement, are the persons to administer the fund and to pay the Legacy Duty under the appointor's will (*re* Philbrick's Trusts, 34 L. J. Ch. 368, and *see* O'Grady *v.* Wilmot, [1916] 2 A. C. 231). If, however, the trustees of the settlement distribute the fund they would be liable for the Legacy Duty as executors *de son tort* of the appointor's estate (*re* Hoskin's Trusts, 6 Ch. D. 281).

Where accountable parties declare themselves ready and willing to pay over or satisfy any legacy or residue after deducting the duty thereon, but the legatee refuses to accept and give a proper release for it, then if any action is afterwards brought to recover the legacy the Court may order all costs and expenses to be paid by the legatee so refusing (L. D. A. 1796, s. 24).

It will be observed that persons accountable for the Legacy Duty have the right of deducting it before payment over, from the legacy itself, and a purchaser of the legacy stands in exactly the same position as a legatee and has no claim to be reimbursed by the legatee for the Legacy Duty deducted unless this has been expressly agreed to at the time of sale (*re* Repington ; Wodehouse *v.* Scobell, [1904] 1 Ch. 811).

Executors cannot, however, deduct the duty on one legacy against another legacy to the same person nor the duty on a legacy to one person against the legacy to another person (A.-G. *v.* Giles, 5 H. & N. 255). Nor has the Revenue any claim on one legacy or on one share of residue for the duty on some other legacy or share of residue (Wright *v.* Barnwell, 13 Jur. 1041). Where the legatee pays the duty to a solicitor or other authorised agent of the executor or trustee, such legatee is not liable if the duty is misappropriated, and the executor or trustee cannot afterwards recover it from the legatee or deduct it from his legacy

(Horne *v.* Coleman, 26 L. J. Ch. 213). A purchaser of a legacy is only liable for the duty on his own legacy. So that where two different legacies are given to a person and he sells one of them, the purchaser cannot be called upon to pay the Legacy Duty on the legacy not included in his purchase.

Where an action is instituted in any Court for the administration of a deceased person's estate, or of any property chargeable with duty which is under the control of the Court, provision is to be made by the Court for due payment of the Legacy Duty, and no payment out of Court is to be made until the official receipt for such duty, or, where the particulars in the official receipt cannot be identified with those in the order directing payment out of Court, a certificate from the Commissioners of Inland Revenue of the payment of Legacy Duty or that no such duty is payable, is produced (L. D. A. 1796, s. 25, and S. D. A. 1853, s. 53). The duty is assessed on presentation of the accounts accompanied by the Order directing payment out and a requisition is then sent to the Paymaster-General under which a transfer of the amount payable is made from the fund in Court to the Inland Revenue account (*see* page 215 as to forms and practice). As to the limits within which the Court is concerned to see that duty has been paid where there have been subsidiary devolutions owing to the deaths of beneficiaries, *see* Ewing's Trustees *v.* Mathieson (1906), 44 S. L. R. 12.

Although in these cases the Court is required to provide for the duties, the executors are, nevertheless, bound to see that proper accounts are rendered and the duty paid, and if for any reason the Court omits to provide for the duty, the accountable parties would be liable to account to the Revenue (*re* Sammon, 3 M. & W. 381, and *see* A.-G. *v.* Chambres, [1921] 1 K. B. 173) though they could call

upon the beneficiaries to recoup them if the estate had been distributed (Foster *v.* Ley, 2 Bing. N. C. 269). If, however, the executors permit a life tenant of a fund in Court to receive the full income and do not see that duty is first deducted they cannot, in the event of their being called upon to account for the duty, claim to be recouped out of the *corpus* (Bowra *v.* Rhodes, 10 W. R. 747). And if the duty is inadvertently paid out of *corpus* and the mistake is subsequently discovered it must be corrected and the duty retained out of the future income before payment to the life tenant (*re* Ainsworth; Finch *v.* Smith, [1915] 2 Ch. 96). Solicitors who are acting for accountable parties are under an obligation to see that provision is duly made by the Court for payment of duty before payment of a legacy or fund out of Court is made (Bryan *v.* Mansion, 26 L.J. Ch. 510).

Executors may from time to time distribute such portions of the estate as have been administered, on payment of the proper amount of duty (L. D. A. 1796, s. 26). But no legacy or share of residue of personal estate or any part thereof is to be paid or satisfied without taking a receipt or discharge in the form provided by the Act (*ibid.*, s. 27). Printed forms of this receipt containing instructions as to how it is to be filled up are furnished by the Commissioners, and should be used by the accountable parties. The receipt is to be duly stamped, and unless this is done cannot be received in evidence (*ibid.*). Where the duty is payable by way of annuity, the stamped receipts are not required except on completing the payment for each of the four years' instalments (*ibid.*).

Executors paying or satisfying legacies or shares of residue without taking such receipts and having the same stamped, and also the legatees receiving such legacies or shares of residue without giving the proper receipts, are

liable to a fine of £10 per cent. on the value of the property in question (*ibid.*, s. 28).

Receipts for legacies or shares of residue are to be brought for assessment and stamping within twenty-one days of the date thereof under a penalty of £10 per cent. on the duty (*ibid.*, s. 29, and Probate and Legacy Duties Act, 1808, s. 44). The executors are the persons liable to see that the receipts are duly stamped and the legatee is under no obligation in this respect.

Executors who retain a legacy or residue for their own benefit are required to bring in an account and on assessment of the duty to pay same within fourteen days under a penalty of treble the amount of duty (L. D. A. 1796, s. 35).

In practice, penalties for delay in payment of Legacy Duty are not usually insisted upon by the Commissioners, and the acceptance by them of the proper duty and interest thereon is an absolute waiver of any penalties which may have been incurred (Inland Revenue Act, 1868, s. 9).

The forms of receipt for legacies are not liable to Stamp Duty, and therefore it is not necessary for legatees to affix receipt stamps when signing receipts for their legacies (L. D. A. 1796, s. 41)

Corrections.

Where too little duty has been paid by mistake, the additional duty, if paid within three calendar months, together with a penalty of £10 per cent. thereon, will be accepted and a proper receipt given (*ibid.*, s. 30). The penalty is not usually insisted upon unless there has been undue delay or other circumstance.

A case of too little duty having been paid occurs where the relationship of the legatee to the deceased is wrongly given and a higher rate is in fact payable. In such case, a fresh receipt showing the proper amount of the duty

and also the old receipt should be furnished. The duty is then assessed afresh in full and the duty already paid appropriated in payment *pro tanto*, the old receipt being cancelled.

Payment into Court.

Where by reason of infancy, lunacy, absence beyond the seas, or a *bonâ fide* doubt as to the law, a legacy or residuary estate cannot be paid over by the executors, it is open to them after satisfying the claims for duty to discharge their liability to the legatee by paying the fund into Court (*ibid.*, s. 32, and Trustee Act, 1925, s. 63, and *see* page 216 as to form applicable). It can then only be dealt with by the proper person making formal application to the Court for payment out (*see* page 215 as to forms and practice). The costs of paying a legacy into Court should be borne by the estate but the costs of payment out of Court fall on the legacy itself (*re* Cawthorne, 12 Beav. 56). Payment into Court in the case of an infant beneficiary will now be less frequent, as under A. E. A. 1925, s. 42, where, without the intervention of trustees, an infant is entitled absolutely under a will or intestacy to a devise or legacy, residuary estate or a share thereof, the personal representatives may appoint trustees of such property for the infant, and on doing so are discharged from all further liability in respect thereof. Personal representatives are also indemnified in cases arising before the commencement of the Act for not making payment into Court (*ibid.*, sub-section 2). Further, under L. P. A. 1925, s. 21, a married infant has power to give receipts for income.

Composition.

The Commissioners have a general power in cases of difficulty or complication to compound any Death Duties (*see* page 255 and F. A. 1894, s. 13); and where there is a

presumptive future claim for duty in respect of any interest in expectancy upon the determination of a life or other temporary interest, the Commissioners may, at their discretion, on the application of the accountable parties, commute the duty presumptively payable for a present sum (Customs and Inland Revenue Act, 1880, s. 11). They are also authorized to compound all claims for Legacy Duty, present or future, in consideration of a single payment (Customs and Inland Revenue Act, 1881, s. 43).

In cases of commutation, the value of the fund or property as in possession at the date of the account is taken and duty calculated in the ordinary way. The present value of such duty on a £4 per cent. basis is then ascertained, regard being had to any contingencies affecting the liability to such duty.

Return of Duty.

Where, after duty has been paid, any debt is recovered against the estate or any loss happens, by reason whereof, or for any other just cause, a beneficiary is obliged to refund his legacy, or the residue or any part thereof, a repayment of duty can be obtained on due proof on oath as to the facts being made (L. D. A. 1796, s. 34). So also duty paid by executors or administrators whose authority is afterwards revoked (as where the grant of probate is revoked) is to be returned. If, however, it is such as ought to be paid by the rightful executor or administrator, it is not returnable but is allowed in account with the rightful executor or administrator (*ibid.*, s. 37).

Limitation of Liability.

Where an executor has given notice in writing to the Commissioners for any claim to Legacy Duty in respect of any fund in his hands which he intends to distribute and shall have given them all the particulars they require,

he may distribute the fund after satisfying any claim to duty and shall be entitled to a certificate discharging him from his liability to duty in respect of the fund (Customs and Inland Revenue Act, 1880, s. 12).

No person is liable for duty after six years from the settlement of the account in respect of which duty is payable where such account was a full and true one and contained all material facts. A trustee, executor, or administrator is similarly protected if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information and belief (Customs and Inland Revenue Act, 1889, s. 14). It should be noted that this provision does not apply unless an account has been delivered (A.-G. *v.* Montefiore, 52nd Inland Revenue Report, page 85). If, therefore, an account has not been delivered before the time for payment in full of the duty has arrived, there will be no protection until an account has been delivered and six years have elapsed since an assessment of duty was made.

Subject as above, there is no limit of time to the liability for Legacy Duty, and any unpaid duty is a debt due to the Crown, as to which *see* pages 148 and 149.

CHAPTER X.

EXEMPTIONS FROM LEGACY DUTY.

(1) Gifts to the Royal Family.

(2) Personal estate not exceeding £100.

(3) Specific legacies under £20 in value.

(4) Settled chattels until they come into the hands of a person competent to dispose.

(5) Books, prints, and articles of artistic or other special interest given to a body corporate.

(6) Similar articles certified by the Treasury to be of national, scientific, historic, or artistic interest until sold.

(7) Money left to pay Legacy Duty.

(8) Legacies for charitable purposes in Ireland.

(9) Free estate not exceeding £1,000.

(10) Free estate slightly exceeding £1,000 ; limitation of amount of Legacy Duty.

(11) Bequests to widow, husband, lineal issue, or lineal ancestors where the taxable limits of value are not reached.

(12) Partial remission of Legacy Duty in the case of Members of H.M. Combatant Forces killed in the Great War or subsequently.

(13) The estate of a person domiciled outside Great Britain.

(14) War securities held by foreigners.

1. The gift of a legacy or share of residue to or for the benefit of any member of the English Royal Family (*i.e.*, the descendants of George III, the reigning sovereign when the exemption was enacted) is exempt from Legacy Duty (Schedule to Stamp Act, 1815).

2. Where the whole of the deceased's personal estate does not amount to £100, Legacy Duty is not payable (Customs and Inland Revenue Act, 1880, s. 13). The exemption strictly only applies where the gross value does not amount to £100, but in practice duty is not claimed where the net amount, after deducting debts and funeral expenses, is under that sum. The exemption applies even where there is real estate which raises the total estate to over £100, and in such a case, where the testator directs his real and personal estate to be sold, Succession Duty is payable on the proportion attributable to the real estate and the remaining proportion goes free of duty. The estate may, however, be entitled to exemption from Succession Duty under exemptions corresponding to Nos. 9 and 11.

3. A specific bequest is a gift of some specific item of deceased's estate, such as articles of furniture, a specific sum of stock, or a share in a limited company, as distinct from a general bequest, which is a gift of money, stock or otherwise, generally.

The exemption from Legacy Duty of specific bequests under £20 in value (Schedule to Stamp Act, 1815, as amended by Customs and Inland Revenue Act, 1881, s. 42) does not apply where the legatee receives some other benefit from the personal estate which together with the value of the specific bequest raises the total benefit to £20 and over. For instance: *A* by will gives to *B* £5 and his piano, worth £10. No Legacy Duty is payable on the piano, as the total benefit to *B* is under £20. But if the

specific legacy had been worth £15 Legacy Duty would have been payable on both bequests. If two specific bequests, each under £20, but together exceeding that value, were given to the same legatee, both would be liable to Legacy Duty. The exemption still applies even though the beneficiary is given an interest in real estate and leaseholds as well as a specific bequest under £20 in value, as the former benefit is a succession and liable to Succession Duty.

If a legatee takes an immediate specific bequest under £20 in value and a future pecuniary benefit (as, for instance, on the death of a life tenant) Legacy Duty is payable on the specific bequest if the then total value is £20 or over.

However many specific bequests were made by the testator to different legatees, they would all be exempt if each were under £20 in value. For instance, where *A* is managing director of a limited company and by his will gives to each of the employés a £10 fully-paid share worth par, no Legacy Duty would be payable, as the bequest to each employé is specific and under £20 in value.

Formerly, pecuniary legacies or shares of residue under £20 in amount were exempt from Legacy Duty, but this exemption was abolished in 1881, and all such legacies, however small the amount, are liable to duty (Customs and Inland Revenue Act, 1881, s. 42).

4. Plate, furniture, or other things not yielding income and settled upon persons in succession are not liable to duty while enjoyed in kind by a person not having power to dispose (L. D. A., 1796, s. 14). Thus, if *A* gives his furniture to *B* for life, then to *C* for life, and then to *D* absolutely, Legacy Duty is not payable until the death of the survivor of *B* and *C*. If, however, the chattels are sold or dealt with during the life of the limited owner, whether the transaction were carried out with or without

proper authority, Legacy Duty would become payable at once (*see* A.-G. *v.* Bruce, [1901] 2 K. B. 391). It should be borne in mind that articles that are consumed by use cannot be settled, and where a testator purports to bequeath them in succession, they vest absolutely in the first life tenant and duty is payable at once. The Legacy Duty on settled chattels is payable by the person for whose benefit the sale is made, or who has power to sell, or who has an absolute interest therein (L. D. A. 1796, s. 14).

Chattels of national, scientific, historic, or artistic interest do not now come within this exemption, but are separately provided for (*see* No. 6 below).

5. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history or other specific articles bequeathed to a body corporate for preservation and not for sale are not liable to Legacy Duty (L. D. A. 1799, s. 1 and Schedule to Stamp Act, 1815). This exemption is extended in practice to gifts to trustees for public purposes of bodies which are not incorporated and to other gifts of specific articles to the nation.

6. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income which appear to the Treasury to be of national, scientific, historic, or artistic interest are not chargeable with Legacy Duty while enjoyed in kind, whether settled or not, but should they at any time be sold the person for whose benefit they are sold shall be accountable for Legacy Duty (F. A. 1910, s. 63, extending F. A. 1896, s. 20, and 6th Schedule to the F. A. 1910, s. 96, amending Legacy Duty Act, 1796, s. 14, as to chattels coming within this exemption). Under F. A. 1921, s. 44, an absolute exemption from duty is given if the sale is to certain specified bodies (enumerated on page 79). As already noted, there is a corresponding provision with regard to Estate Duty (*see* page 172).

7. Money left to pay Legacy Duty is not itself chargeable with Legacy Duty (L. D. A. 1796, s. 21). This exemption covers the Legacy Duty on all legacies directed to be paid free of duty. In effect, such direction is a further legacy of the amount of the duty, and, but for this exemption, Legacy Duty would have been chargeable. So also where a fund is directed to be set aside for payment of Legacy Duty the sums so applied are not to be charged with Legacy Duty.

When there is a direction freeing a legacy from duty (*see* page 250 *et seq.*), such duty may be deducted against the residuary estate.

Where real estate is given free of duty, Legacy Duty is chargeable on the Estate Duty and Succession Duty payable in respect of such property, as in effect the direction amounts to a bequest to the devisee of the amount of the Estate Duty and Succession Duty (*cf.* A. E. A. 1925, s. 55 (1) (ix)). Formerly, Legacy Duty was not claimed in respect of such sums, but claims are now made. Similarly, if the testator makes a gift within three years of his death, and by his will directs that any duty thereon shall be paid out of his estate, Legacy Duty is payable on such duty, as the direction constitutes a legacy to the donee of the amount of the duty on the gift.

Where legacies are given free of duty and the estate is not sufficient to pay them in full so that they have to abate rateably, the duty is necessarily payable out of the legacies themselves and this exemption does not apply (*re* Turnbull; Skipper *v.* Wade, [1905] 1 Ch. 726). The Legacy Duty in such cases must be paid out of each legacy as abated.

Where legacies or some of them are given free of duty and the estate is insufficient, the proper course is to apportion the assets between the legacies given free plus the duty thereon and the legacies not given free, leaving each legatee

to bear his own duty. Thus, suppose the available assets amount to £1,100 and legacies are given as follows :—

	£
£1,000 to a nephew, free	1,000
Duty thereon at £5 per cent.	50
£500 to a stranger, free	500
Duty thereon at £10 per cent.	50
£600 to a charity, not free	600
Total legacies and duties to be paid out of residue	£2,200

The residue of £1,100 is divisible as follows :—

	£
$\frac{1000}{2200}$ of £1,100 to the nephew .. .. (out of which he would pay to the Revenue £26 5s.)	525
$\frac{550}{2200}$ of £1,100 to the stranger in blood .. (out of which he would pay to the Revenue £27 10s.)	275
$\frac{600}{2200}$ of £1,100 to the charity .. .. (out of which the Revenue would be paid £30)	300
Total ..	£1,100

Where the abated amount of the legacy given free of duty, plus the abated amount of the duty together exceed the nominal amount of the legacy itself, no Legacy Duty is chargeable on the excess over the amount of the legacy given free of duty.

8. Legacies given for the maintenance of poor children in Ireland or to be applied in support of any charitable institution in Ireland or for any purpose purely charitable are exempt from Legacy Duty (Stamp Duties (Ireland) Act, 1842, s. 38). The legacy must be charitable, though not necessarily

for the relief of the poor, and given to an Irish charity (A.-G. (I.) *v.* Hope (1868), 2 I. R. C. L. 368), by the will of a testator whose domicile is in Ireland. A legacy for purely private religious purposes would not be exempt (A.-G. (I.) *v.* Delaney, Ir. R. 10 C. L. 104), although it has been decided that a bequest for masses in perpetuity in Ireland is a good charitable gift whether there is a direction that the masses should be celebrated in public or not (O'Hanlon *v.* Logue, [1906] 1 I. R. 247, which partly overrules A.-G. *v.* Delaney, mentioned above). This exemption does not now affect the duties payable to the British Exchequer (*see* pages 16 and 17).

9. Where the net value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, Legacy Duty is not payable under the will or intestacy of the deceased (F. A. 1894, s. 16 (3)). This exemption applies to all rates and not merely to the £1 per cent. rate. It should be noted that it does not apply to property settled otherwise than by the will of the deceased, nor does it apply unless Estate Duty is payable on the death of the deceased in respect of the property in question. As to what properties passing on the death of the deceased make up the estate not exceeding £1,000, *see* page 89 *et seq.*, as to aggregation.

10. A further provision in relief of small estates which exceed £1,000 was introduced by the F. A. 1914, s. 13 (2). Thus, where the free estate exceeds £1,000, the amount of Legacy and Succession Duty is limited to the amount of such excess. It should be noted that this provision does not apply to property settled otherwise than by the will of deceased, and that in considering whether it applies, the amount of both Legacy Duty and Succession Duty have to be taken into account. For instance, suppose on the death of *A* his net free estate amounted to £1,050,

including personal estate £600 and real estate £450. The beneficiaries are strangers in blood, and therefore the duty would be as follows :—

	£	s.	d.
10 per cent. Legacy Duty on personal estate after deducting Estate Duty and testamentary expenses (say) ..	56	4	0
10 per cent. Succession Duty on real estate after deducting Estate Duty	43	13	0
Total ..	£99	17	0

But this sum is greater than the amount (£50) by which the net estate exceeds £1,000, and therefore the correct sum payable for Legacy and Succession Duty will be £50. Unless one person takes the whole estate, the abated duty will have to be apportioned rateably between the real and personal estate and between all the beneficiaries, including specific and pecuniary legatees (unless the legacies are given free of duty). For the purpose of this relief the net value of the estate for Estate Duty is the basis, *i.e.*, the net value as shewn by the Inland Revenue Affidavit. In connection with this abatement the corresponding limitation of Estate Duty where the margin above the next step in the scale is small should be noted (*see* page 81).

11. Where Estate Duty has been paid, Legacy Duty at £1 per cent. is not payable unless the taxable limits are reached (F. A. 1910, s. 58 (2), and F. A. 1894, s. 1, 1st Schedule, 5th par.) (*see* pages 236-241).

To ascertain whether this exemption applies, two questions must be answered :

First—Does the property passing on deceased's death in respect of which Estate Duty is payable (not taking into account the exceptions mentioned on page 326) exceed £15,000 (F. A. 1910, s. 58 (2) (*a*)) ?

Secondly—Does the total individual benefit taken by the beneficiary from the same testator, intestate, or predecessor, whether as a legacy or a first succession after the F. A. 1910, exceed £1,000 (F. A. 1910, s. 58 (2) (*b*)), or, in the case of a widow or infant child, £2,000 (F. A. 1910, s. 58 (2) (*c*)) ?

If the answer to both questions is in the negative, or if the answer to one is in the affirmative and the answer to the other in the negative, Legacy Duty at £1 per cent. is not payable. But if the answer to *both* is in the affirmative, Legacy Duty at £1 per cent. is payable.

The exemption from the £1 per cent. Legacy Duty where Estate Duty has been paid applies not only to absolute bequests but also to settled legacies and residues. Once it has been established that the £15,000 limit is not exceeded, the subsequent death of a life tenant entitled under the will does not give rise to any claim for the £1 per cent. duty, even though on his or her death property liable to Estate Duty passes and exceeds £15,000 in value. Conversely, if it was found that the £15,000 limit was exceeded, and Legacy Duty at £1 per cent. was chargeable, the fact that on the death of a life tenant the property passing for Estate Duty does not amount to £15,000 will not affect the liability to further Legacy Duty at £1 per cent. under the original will.

12. In the case of persons killed during the Great War no Legacy Duty was payable where the value of the property passing to the widow, lineal descendants, lineal ancestors, or brothers or sisters or their descendants, did not exceed £5,000 (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*a*), as extended by F. A. 1917, s. 29, F. A. 1918, s. 44, and F. A. 1919, s. 31), and where the property so passing exceeded that sum, the first £5,000 was free of Legacy Duty, and the Legacy Duty (if any) on the rest was discounted

for the period the deceased would have lived if he had enjoyed the normal expectation of life (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*b*)). (*See also* page 167 *et seq.*)

Further, if property passed more than once owing to deaths caused by the War, the whole of the Legacy Duty otherwise payable in connection with the second death was remitted, whatever might have been the relationship of the legatee and whether there was any relationship between the deceased persons or not (Death Duties (Killed in War) Act, 1914, s. 2, and F. (No. 2) A. 1915, s. 46).

The remission under these provisions has been extended by F. A. 1921, s. 43, to certain specified persons dying after 31st December, 1918, from causes arising out of the then state of disorder in Ireland (*see* page 170). A further extension of this remission (except that provided for in s. 2 of the Death Duties (Killed in War) Act, 1914) has been made by F. A. 1924, s. 38, as to members of the combatant forces dying after 31st August, 1921, from the causes specified while on active service or on service of a warlike nature, or which in the opinion of the Treasury involves the same risks as active service (*see* page 171).

13. Where the deceased is domiciled abroad (*i.e.*, outside Great Britain, which does not include the Channel Islands or the Isle of Man), Legacy Duty is not payable on any of his personal estate (not including leaseholds), whether situate in this country or not (Thomson *v.* Advocate-General, 12 Cl. & F. 1). The rule is that moveable property is considered to follow the person of the owner and for the purposes of Legacy Duty is situated in the country in which he dies domiciled.

Domicile.

The domicile (as to domicile generally, *see* Dicey's Conflict of Laws, 3rd edition, page 83 *et seq.*) of a person is in general the place or country where he permanently resides or has his

home or which is determined to be his permanent home by rule of law. His home is that place or country in which he resides with the intention of remaining permanently or with regard to which he retains intention though no longer in fact resident. If he has more than one residence his domicile is the place where he usually resides with his wife and family (Forbes *v.* Forbes, Kay 341).

The domicile may be either a domicile of origin or a domicile of choice. The former is the domicile received by a person at his birth : viz., in the case of a legitimate child his father's domicile, or, in the case of an illegitimate child, his mother's domicile. This domicile is retained until such person acquires another by choice (Winans *v.* A.-G., [1904] A. C. 287). A domicile of choice may be acquired by a person leaving the country or state of his domicile of origin and voluntarily taking up his abode in some other country or state with the intention of residing there permanently or indefinitely. So the domicile of a person born in England of parents domiciled there is *ipso facto* English, but if on attaining his majority he elects to emigrate to Australia and settles there with an intention of living there permanently and indefinitely, he loses his domicile of origin and acquires a domicile of choice in Australia. But if he afterwards decides to leave Australia, his domicile of origin would revive (Udny *v.* Udny, L. R. 1 Sco. App. 441), and if he died before acquiring a new domicile of choice his domicile at death would accordingly be English.

An intention to settle in a new country may change a domicile of origin even though naturalization papers are not taken out. But a domicile of choice cannot be acquired merely by a declaration of intention, however clearly expressed. Neither is residence, however long its duration, sufficient in itself. Intention and residence must as a general rule both be present.

The residence must be freely chosen and not prescribed by necessity, such as the duties of office, the demands of creditors, or relief from illness, and must be general and indefinite in its future contemplation. So the residence of English officials abroad is not a fact from which a change of domicile can be inferred.

The domicile of a married woman is the same as that of her husband (Lord Advocate *v.* Jaffrey, [1921] 1 A.C. 146), and soldiers and sailors in His Majesty's Service retain the domicile they had on entering the Service, wherever they may be stationed (*ex parte* Cunningham, 13 Q. B. D. (C. A.) 418).

There was formerly a presumption against the subject of a Christian country acquiring a domicile in a non-Christian country, but in view of the decision of the House of Lords in Casdagli *v.* Casdagli, [1919] A.C. 145, this presumption no longer holds, and there is now no legal obstacle to a British subject acquiring a domicile of choice in any Oriental country, provided the necessary conditions to establish such a domicile have been fulfilled.

14. As noted on page 176, the Treasury were empowered to issue war securities to be free from taxation so long as they are owned or held by persons neither domiciled nor ordinarily resident in the United Kingdom (now Great Britain and Northern Ireland). In any case, if the deceased owner was not domiciled in Great Britain, the whole of his moveable estate would be exempt from Legacy Duty as already indicated.

CHAPTER XI.

LEGACY DUTY.—PRACTICE.

THE value of a settled fund for Legacy Duty is its value at the time the duty becomes payable, *i.e.*, upon payment or other satisfaction of the legacy or on retainer for the benefit of the persons entitled (L. D. A. 1796, s. 13).

In the case of a residue, the duty is calculated on the value when payment is made to the persons entitled or the property is retained upon trust (*ibid.*, s. 6). In practice, unless otherwise stated or unless considerable time has elapsed since the death, such payment or retainer is deemed to take place at the date of the residuary account.

The executors have a year in which to get in the estate and pay legacies and distribute the residue (A. E. A. 1925, s. 44).

LEGACIES.—The duty on legacies is accounted for on *Form No.* 1, which should give the names of the beneficiaries, their relationship to the testator or intestate, and the amount of the bequest. In defining the relationship of a legatee, indefinite terms like "nephew," "niece," or "cousin" should not be used. The correct terms as defined by the Act are given on the back of the account (*see also* tables on pages 235 and 243). For instance, the description of a "nephew" or "niece" is a "descendant of a brother of the deceased" or "descendant of a sister of the deceased."

If pecuniary legacies are accounted for within a year, no interest is charged on the duty, otherwise interest is charged from one year from the death. If, however, payment of a legacy is made, whether within the year or not, and the duty

is not accounted for within twenty-one days the executors become liable to penalties (L. D. A. 1796, s. 28), but in practice, unless there has been wilful neglect, the penalties may be waived on payment of interest on the duty from the date of payment of the legacy.

In the case of specific legacies the value at the date of transfer or delivery should be accounted for, including, in the case of a legacy which bears income, the accrued income or profits to that date.

Thus, if the specific legacy is of stock or shares in a company they should be accounted for at their market value at the date they were transferred to the legatee, with all accrued dividends to that date. The same applies to a bequest of a mortgage debt, share in a business, etc.

Annuities.—Where Legacy Duty is chargeable by way of annuity (L. D. A. 1796, s. 8), it should be accounted for on *Form No.* 2, which, in addition to the particulars given above, should show the date of birth of the annuitant. Where the annuity or income is payable from the testator's death, the account is assessed on the basis of the completed age of the annuitant at that date.

The duty may be paid at once, in which case discount for two and a half years, less the time which has elapsed since the testator's death, will be allowed; or it may be paid by four equal yearly instalments, the first of which is payable at the end of the first year from the death, *i.e.*, if payment of the first year's annuity is completed by then. In strictness, the first instalment becomes payable before or on completing payment of the first year's annuity or income, so that where a legacy is settled upon trust for a person for life and the executors require a year in which to get in and invest the estate, the first instalment of Legacy Duty on the life interest would not become payable until the end of the second year.

The two and a half years referred to above is an average arrived at as under :

1st	instalment of duty due at end of			1	year	from death
2nd	,,	,,	,,	2	years	,,
3rd	,,	,,	,,	3	,,	,,
4th	,,	,,	,,	4	,,	,,
			Total ..	10		

Average period : two years and six months.

Where there is a direction to purchase an annuity of a fixed amount the duty is payable in full on the value according to the tables and cannot be paid by instalments. The sum actually paid for the purchase of the annuity may be deducted in the residuary account. The annuity to be purchased is the amount given by the will, less duty at the proper rate (L. D. A. 1796, s. 10). Thus if *A* directs the purchase of an annuity of £20 for his servant *B*, aged sixty, the value of the annuity according to the tables, viz., £194. 8s. 2d., is first ascertained and duty paid at the rate of £10 per cent. : viz., £19. 8s. 9d. The annuity to be purchased is £20, less 10 per cent. = £18. Where the annuity is given free of duty, the whole annuity, without reduction, should be purchased.

Residuary Account.—Having accounted for Legacy Duty on the legacies, got in the estate, and paid the debts, the next step is to render a general account showing what the residuary estate amounts to. *Form No.* 3 in duplicate should be used for this purpose. As already stated, it should show the value of the residuary estate at the date it is paid over to the residuary legatee or, if settled, the date it is retained upon trust. This date, where there has been no undue delay, is in practice taken as the date of the account, because no distribution should be made until the duty has been accounted for : otherwise penalties are incurred (*ibid.*, ss. 27, 28 and 29).

Two columns are given in the account—one for assets which have been realised and one for assets not realised. In the former, the actual gross proceeds of sale should be included; in the latter, the assets should be included at their value at the date of the account. This value is not necessarily the same as for Estate Duty, as there may have been a variation in value since the testator's death.

In the case of property not realised, the accounting parties should set a value thereon (L. D. A. 1796, s. 22). Should the Commissioners not be satisfied they may appoint a person to value the property, and the executors, if they consider such value excessive, have rights of appeal. The Commissioners may also value the property or cause a valuation to be made in case there is any dispute between the persons entitled and the executors.

In ordinary cases where the amount involved is small, an estimate by the accountable parties is sufficient, but in other cases a professional valuation may be necessary. It need not be stamped unless intended to be used for other purposes and it should be filed with the account. In general the same principles should be applied in arriving at the value of unsold property for Legacy Duty as for Estate Duty. The only difference is that the date for valuing is the date of the account and not the date of death.

Deductions may be taken in the residuary account as follows:—

(1) Estate Duty and interest thereon, excluding Estate Duty on real estate not included in the account, but including Estate Duty on leasehold property. Real estate and leaseholds devolving under an intestacy or given upon trust for sale as part of the residuary estate may be included in the residuary account (although

the duty payable is, strictly speaking, Succession Duty), and in that case the Estate Duty paid on the real estate may be deducted. If unsold, the Estate Duty value of real estate and leaseholds may be accounted for, but if in the course of administering the estate a sale has taken place, the sum realised should be accounted for, whatever may have been the value for Estate Duty.

The Estate Duty on gifts *inter vivos* is not a good deduction in a residuary account, for such duty is a charge on the property given (F. A. 1894, s. 9 (1) and *re* Crocker; Crocker *v.* Crocker, [1916] 1 Ch. 25), and where paid by the executors is repayable to them by the donee (F. A. 1894, s. 9 (4)).

Similarly, the Estate Duty on a *donatio mortis causa* may not be deducted. The property included in such a gift does not pass to the executor as such, and the Estate Duty is a charge on the property (F. A. 1894, s. 9 (1)) and is repayable to the executor by the donee (*re* Hudson; Spencer *v.* Turner, [1911] 1 Ch. 206).

Again, the Estate Duty on property over which the deceased had a general power of appointment, unless he exercised the power by his will and the property is included in the residuary account, is not a proper deduction, and if such duty were paid by his executors it is recoverable by them from the trustees of the will creating the power (Porte *v.* Williams, [1911] 1 Ch. 188, and *re* O'Grady; O'Grady *v.* Wilmot, [1916] 2 A. C. 231).

(2) Court fees on obtaining probate.

(3) Funeral expenses as in the Inland Revenue affidavit. The amount should be reasonable having regard to the position and means of the deceased.

(4) Debts as in the Inland Revenue affidavit and also voluntary debts which the executors are legally liable to pay, though (not being for full consideration in money or money's worth) they were not deductible against the value for Estate Duty.

(5) Testamentary expenses. These include cost of administration and winding up, including the capital fees of the Public Trustees in cases in which he is concerned, cost of valuation, brokers' fees, expenses of sale, and expenses of carrying on the deceased's house until it can be closed. Where, however, the house is carried on longer than is strictly necessary for the purpose of administering and is occupied beneficially by relatives, such extra expense is not a good deduction. Where the tenancy has not expired and the executors are unable to re-let the house and the landlord accepts a surrender on payment of a lump sum, such sum and also rent payable up to that date may be deducted.

(6) Where the deceased's will expressly directs a tombstone to be erected over his grave, the cost thereof may be deducted and a deduction for mourning for servants and family may in practice be allowed, provided such expenditure is reasonable having regard to the deceased's position and the amount of his estate.

(7) Legacies and, where they are given free of duty by the will, the duty thereon. Estate Duty

and Succession Duty on real estate specifically devised free of duty, and Succession Duty on leasehold property specifically bequeathed free of duty, may also be deducted, but such sums are liable to Legacy Duty as a legacy to the devisee or legatee as explained on page 281 (L. D. A. 1796, s. 21).

On page 3 of the account should be included all income (less income tax) received between the date of the death and the date of the account, and an apportionment of all income to that date (A.-G. *v.* Cavendish (1810), Wight. 82). Thus mortgage interest, profits of business, and rents of real estate included in the account should all be apportioned so that the account shows the exact position of the estate with all accretions to date. In the case of a farm tenancy which is wound up, the amounts realised by the sale of the stock and for the tenant right should be accounted for, while the costs of carrying on the farm until the undertaking is wound up may be deducted. From the total income of the estate may be deducted payments to the date of the account in respect of any annuities given by the will, apportioned interest on mortgages of real estate included in the account, interest on legacies where, for any reason, interest is payable (*e.g.*, where they are given by the will with interest, or payment is not made until more than a year after the death, or where by law they carry interest from the death).

Finally, if annuities are given by the will and the annuitants are in ordinarily good health (as to which a signed statement by a person having knowledge of the facts should be supplied), the value of their annuities will generally be allowed as a deduction and in such cases no further Legacy Duty becomes payable on the death of the annuitants. The deduction should be the value

for the completed age of the annuitant at the date of the account and not at the date of death. Where the deduction of the value of the annuity or annuities would absolutely exhaust the residue, the practice of allowing the deduction of the value would not be permitted (*see also* page 261 *et seq.*). If the value is not deductible, the strict course should be followed and the capital set aside for the annuity or a portion of the estate sufficient to produce the annuity should be deducted, and on the death of the annuitant a supplementary account on *Form No.* 3–1 in duplicate should be rendered for Legacy Duty on the then capital value of the property so deducted, less any further Estate Duty payable in consequence of the F. A. 1914, s. 14.

After all proper deductions have been made in the residuary account, Legacy Duty is charged on the balance—

(*a*) Where the residuary legatees take absolutely.

(*b*) Where the residue is settled and all the legatees are liable to the same rate of duty.

If there has been any considerable delay between the date of the account and the date when it is ready for assessment, interest on the duty is charged for such period, and if, prior to the date of the account, advances have been made to the residuary legatees on account of their shares, interest on the duty on such advances is charged from the date when they were made.

Where the life tenant and those entitled on his death are liable to different rates, duty must be paid in the first instance by way of annuity. In that case a similar No. 3 account is rendered, except that no payments that are a charge on income should be deducted, such as interest on Estate Duty or Legacy Duty, and also that income since the death should not be accounted for. To the No. 3 account should be annexed a No. 2 account as used for ordinary annuities This account should show the net

annual income produced by the trust estate. Thus the actual income produced by the unrealised assets should be accounted for. The cash balance, and any property of value but not for the moment producing income, may be accounted for at £4¾ per cent. interest (*see also* page 261 *et seq.*). In no case should any deduction be taken for Income Tax. The value of the life interest and the amount of duty thereon is then calculated in the same way as for an ordinary annuity and is payable by the same instalments and is subject to the like conditions as to discount and cesser of instalments not due in the event of the life tenant dying.

On the death of the life tenant duty becomes payable on the *corpus* and should be accounted for on *Form* 3–1 in duplicate (*see* below).

Where Legacy Duty becomes payable on the death of a life tenant, annuitant, or other limited owner, *Form* 3–1 in duplicate should be used. As a general rule it should show the value of the trust fund at the date of the death of the life tenant or annuitant, less costs of division and any further Estate Duty payable in consequence of the F. A. 1914, s. 14. Income since that date should not be included and the investments should be valued at that date without regard to the prices they may have realised on a subsequent sale. Interest on the duty is charged from the death of the life tenant or annuitant.

Where the trustees have power under the will during the life of the life tenant to make advances to the persons entitled on his death, Legacy Duty becomes payable at the time any such advance is made (subject to a suitable allowance in respect of any Legacy Duty paid in respect of the remainder of the life tenant's interest), and if not then paid, interest from such date is chargeable.

Where a reversionary interest is given as a legacy or included in a residuary estate and the executors wish

to dispose of their future liability for Legacy Duty, they are in general permitted to do so provided the life tenant is in ordinarily good health. In such a case they should account for the value of the interest at the date of the account. Thus, suppose *A* is entitled to a fund on the death of *B* and he predeceases *B*, giving the reversion to his nephew *C*. At the date of the account the value of the investments representing the fund is £500, the age of the life tenant sixty, and the income £25 :

	£	s.	d.
Present value	500	0	0
Less value of £25 per annum for a life aged 60	243	0	3
Value on which Legacy Duty is payable	£256	19	9

The account should be based on the completed age of the life tenant at the date of the account. If the reversion might fall in on the happening of some other event than the death of the life tenant (as, for instance, re-marriage or bankruptcy) only a proportion of the value of the life interest may be allowed, as noted in the case of Estate Duty (*see* page 213).

If after the residuary account has been disposed of the parties wish to pay the Legacy Duty on a reversionary interest, it may be accepted by the Commissioners by way of commutation, provided the life tenant is in ordinarily good health. In such a case the duty is ascertained as follows :—

	£	s.	d.
Present value of the investment, say ..	500	0	0
Duty thereon at £5 per cent.	25	0	0
Present value of such duty on death of life tenant, aged 60, on a £4 per cent. basis	14	19	7

If the reversion may fall in earlier (as on re-marriage or bankruptcy, alienation, etc.), the allowance for the life interest would be reduced as already noted. So also if the health of the tenant were precarious, the allowance for his life interest would be subject to reduction as determined by the Commissioners, or they might in such a case refuse to accept duty in advance.

Where the free estate exceeds £1,000, the amount of Legacy and Succession Duty is not to exceed the amount of such excess (F. A. 1914, s. 13 (2) and *see* page 283). If it is clear that the whole of the excess over £1,000 will be payable for Legacy and Succession Duty, separate accounts are not required and the duty will be assessed at the amount of the excess. Thus, if the deceased's free estate is £1,020 and is given to nephews and nieces, it is obvious that the full amount of Legacy and Succession Duty would exceed £20, and therefore such duties are assessed at £20 in a lump sum on a form prepared in the Estate Duty Office without the necessity for separate Legacy Duty or Succession Duty accounts. It will, however, be necessary for the accountable parties to apportion the abated duty rateably between the various beneficiaries except those whose benefits are given free of duty.

Corrections.—Where after Legacy Duty accounts have been rendered it is found they are incorrect they should be adjusted as follows: where the value of a legacy or residue is under-estimated owing to an asset being omitted or under-valued, a supplemental account on *Form No.* 1 in duplicate for the additional duty should be rendered. If a legacy or residue was over-estimated, application for return should be made on *Form* H, duly sworn by the executors and accompanied by the original stamped account. If the relationship was given incorrectly and a different rate of duty is payable, a fresh account

for the whole duty should be rendered showing the correct relationship. The duty already paid will be appropriated in satisfaction or part payment and any balance returned.

Where duty on an annuity or life interest is paid in advance under discount and the annuitant or life tenant dies before all the instalments of duty have become due, application for return should also be made on *Form* H, accompanied by the stamped account. Evidence of the death, such as a death certificate or production of the probate of the will of the deceased beneficiary, may also be required. If in such a case the full value of the annuity was deducted in the residuary account it may also be necessary to adjust such deduction. (*See also* observations on page 391 as to correction of Succession Duty.)

When all the accounts have been rendered, and before finally distributing the estate, application should be made to the Estate Duty Office for an assurance that all claims of the Revenue have been met. It is the practice of the Office to bring outstanding claims for duty to the notice of the accountable parties, but they are under no statutory obligation to do this and the accountable parties in their own interests should satisfy themselves by enquiry that there are no outstanding claims for duty.

Where interest on Legacy Duty is chargeable, the rate since 31st July, 1919, is £4 per cent. (F. A. 1919, s. 30). As to payment of interest by the Crown on duty returnable, the observations on page 208 apply equally to Legacy Duty.

The values of annuities and life interests are to be calculated in accordance with the tables in the S. D. A. 1853. For Table I, *see* page 419.

As to the method of rendering accounts and paying the duty when assessed, including payment by transfer

of war securities ; and as to payment in and payment out of Court, and the forms of certificate in use, *see* notes on Estate Duty Practice, Chapter VI, pages 189 to 223.

All the forms of Legacy Duty accounts may be obtained from the Controller, Estate Duty Office, Somerset House, W.C.2, on personal application or by letter, and except *Form* H, they may also be obtained on personal application at Head Post Offices outside the Metropolitan Postal District and at the Throgmorton Avenue Post Office, London Wall, E.C.2.

Forms for use in Scotland can be obtained from the Registrar, Estate Duty Office, Edinburgh.

PART III.

SUCCESSION DUTY.

SUCCESSION Duty was first imposed by the S. D. A. 1853, and is therefore of more recent origin than Legacy Duty. It is a tax on the gratuitous acquisition of property on a death. The person from whom the property is derived is termed "the predecessor," the beneficiary is termed "the successor," and the property he derives is said to be "a succession." The rates of duty depend on the relationship of the successor to the predecessor and, in the case of first successions since the F. A. 1910, are—£1 per cent. for lineal issue (including children adopted in accordance with the Adoption of Children Act, 1926), lineal ancestors, wives, and husbands; £5 per cent. for brothers and sisters and their descendants; and £10 per cent. for all other relations and strangers in blood.

Succession Duty differs from Legacy Duty in that the former duty may be payable under deeds and other instruments as well as under wills and intestacies, while Legacy Duty arises solely under wills and intestacies (except in the case of *donationes mortis causa*). Legacy Duty also is confined to personal property (excluding leaseholds) while Succession Duty is payable on real estate and leaseholds, and also on personal estate (not including leaseholds) except where Legacy Duty is chargeable. Legacy Duty, again, is not payable under a will where the domicile of the testator is foreign, but Succession Duty may in such case be payable where the property is settled and it would be necessary to resort to the Courts of this country to execute the trusts.

Before the F. A. 1894, Succession Duty was, in the case of real estate, payable on the value of the interest of the successor whether he were merely life tenant or absolute owner, calculated as an annuity according to the tables given in the S. D. A. 1853. But since the Act of 1894, where the successor is competent to dispose, the duty is calculated on the capital value of the property itself, as for Estate Duty (F. A. 1894, s. 18).

The text of the Acts relating to Succession Duty is given in the Appendix, commencing page 407.

Following the arrangement adopted in the case of Estate Duty and Legacy Duty, Succession Duty will be considered under the following heads :—

1. The Property upon which it is Payable.
2. The Rates and Amount of Duty Payable.
3. The Persons Accountable.
4. Exemptions.

CHAPTER XII.

THE PROPERTY UPON WHICH SUCCESSION DUTY IS PAYABLE.

SUCCESSION Duty is chargeable under every transfer on death by which a person becomes gratuitously entitled to property (S. D. A. 1853, s. 2).

The person from whom the succession is derived is termed "the predecessor," the person taking the succession is termed "the successor," and the property taken is termed "the succession." The duty is payable, at a rate depending on the relationship of the successor to the predecessor, on all real and leasehold property and also on all personal property not liable to Legacy Duty.

For the purpose of Succession Duty the term "real property" includes freehold property, including copyholds now enfranchised by the Law of Property Act, s. 128, 1922, leasehold, and other heritable property, and all estates in such property. The term "personal property" does not include leaseholds, but includes money payable under any engagement and all other property not comprised in the above definition of real property (S. D. A. 1853 s. 1). For the purpose of this duty leasehold property is on the same footing as real property although, strictly speaking, it is personal property.

The three essential characteristics of a succession are—

(*a*) A disposition or devolution of property.

(*b*) A gratuitous acquisition.

(*c*) A death on which the property is transmitted.

By a *disposition* is meant any act of the owner, whether by deed or other instrument created during his lifetime or

by his will, under which an interest accrues on death. By *devolution* is meant the transmission by act of law of the interest of the owner on death.

Example of a disposition : *A* by deed settled £1,000 on himself for life and then on his niece *B* absolutely. On *A's* death Succession Duty is payable by *B* in respect of her succession to the £1,000 derived from *A* as predecessor under the disposition made by him.

A devolution arises by act of law, as where a person dies intestate or a tenant in tail dies. Thus if *A* dies intestate, his real estate descends in accordance with the A. E. A. 1925, and the successors are liable to Succession Duty as on a succession by devolution from *A*.

The general rule is that in cases of devolution the last possessor is the predecessor, and the successor pays duty according to his relationship to him.

In the case of entailed property, each person expressly named in the entail derives his title from the settlor and the rate of duty is determined by the relationship existing between them, but a successor who derives his title as being the heir of a person who was himself an heir of the same *stirps* or series is treated as deriving his title by descent from the person last entitled and not from the settlor, and pays duty according to his relationship to such person (*see* Hamilton *v.* Ld. Adv., [1920] A. C. 50).

A person who wrongfully takes possession of property on the death of the owner and obtains a title by adverse possession takes a succession by devolution from the person who was last in possession, and is liable to Succession Duty according to his relationship to such person.

The acquisition of the property by the successor must also be beneficial and gratuitous. Transactions for full consideration in money or money's worth are not included (*see* S. D. A. 1853, s. 7). So that if *A* by deed for full

consideration in money or money's worth conveys a house to *B*, reserving to himself a life interest, no Succession Duty would be payable by *B* on the death of *A*, because *B* has paid a full monetary consideration.

But to escape Succession Duty, the consideration must be for money or money's worth (Fryer *v.* Morland, 3 Ch. D. 675). Other considerations, though valuable, would not be sufficient to relieve the property from duty. Thus if *A*, in consideration of marriage (which is a valuable but not a pecuniary consideration), settled £1,000 on himself for life and then on *B* for life, Succession Duty will be payable on *A's* death (Floyer *v.* Bankes, 3 De G. J. & Sm. 306).

It follows from this, that where the consideration for the disposition is only partly monetary, Succession Duty will be payable on the balance, as to that extent there is no exemption from Succession Duty. Thus where *A*, on being taken into partnership with *B* in a business valued at £60,000, was given a one third share, and agreed that in case *B* died during the partnership he would purchase his partner's share for £10,000, Succession Duty would be payable on the death of *B* on the value of his two thirds share in the business, less the £10,000 payable by *A* (Brown *v.* A.-G., 79 L. T. 572).

Gifts with Reservation.

Where, however, in transactions of this kind, the successor pays nothing out of his own pocket, he will not be relieved from duty. For example: *A* gives £500 to a charity subject to the payment of an annuity of £25 to himself for life and on his death to his wife for life. It is evident that the annuity is approximately the average income of the fund, and nothing really comes out of the donee's pocket. Succession Duty would therefore be payable on the death of *A's* wife on the capital value of the annuity of £25 which then ceased to be payable, in addition

to the Estate Duty which, on *A's* death, would be chargeable on the full £500 (A.-G. *v.* Johnson, [1903] 1 K. B. 617).

The above is an example of a disposition which is accompanied by a reservation for the benefit of the grantor or any other person for any period ascertainable only by reference to death, and such dispositions are expressly made liable to Succession Duty (S. D. A. 1853, s. 7, and A.-G. *v.* Johnson, *supra*). This provision does not apply to genuine sales, but was intended to prevent any evasion of duty by an owner giving away property in his lifetime and reserving a life interest to himself, his wife, or other person.

The reservation must, however, be enforceable, and therefore if a person effectually gives away property in his lifetime with an expectation, but not an enforceable agreement, that he will be permitted to enjoy the income for life, Succession Duty would not be payable. This applies to all gifts made by a person during his life, even though within three years of his death, in which case, as has been explained, Estate Duty would be payable.

Where there is an enforceable reservation and the gift is of personal estate, duty is payable on the increased benefit as a perpetual annuity, which is calculated at twenty-four and two-fifths years' purchase (Lord Advocate *v.* McKersies, 19 S. L. R. 438). Thus if *A* gives £1,250 to *B*, reserving to himself an annuity of £50 for life, Succession Duty is payable on *A's* death on the value of £50 as a perpetual annuity. According to the tables, this is valued for ninety-five years or about twenty-four and two-fifths years' purchase, and would be worth £1,219. 17s. 9d. Where an annuity was reserved out of the income of real estate, Succession Duty is regarded as payable on the value only of the annuity for the life of the successor. The succession is not considered to be a succession to real property within the meaning of s. 18 of the F. A. 1894, and the claim for Succession Duty

does not therefore extend to the principal value of so much of the property as is required to produce the annuity.

If the donee dies before the donor, no Succession Duty would be payable on the death of the donor. The property would, however, be liable to Estate Duty as part of the donee's estate, and on the donor's death further Estate Duty would be payable on the increase of benefit to the estate unless it had been accounted for on the donee's death as an expectant interest forming part of his estate.

Where a disposition of property is made to take effect at a period ascertainable only by reference to death, Succession Duty is payable (S. D. A. 1853, s. 8). So also if a disposition is made, and by reason of an enforceable secret trust or arrangement the beneficial ownership in fact devolves on death or at some period ascertainable by reference to death, Succession Duty is payable (*ibid.*). And where the Court declares any disposition to have been fraudulent, and made for the purpose of evading duty, it may declare a succession to have been conferred (*ibid.*).

The last essential characteristic of a succession is that there must be a *death* on which the property or benefit falls to the successor. Every claim for the duty has to be referred to a death upon which the beneficial acquisition of property took effect (*ibid.*, s. 2). But the liability to duty comes into being as soon as a succession is conferred. Therefore any transaction (not being a sale) by which a person may become entitled to property on a death creates a liability to duty, and such liability cannot be got rid of by any subsequent dealings with the property (*see* per Lord Chancellor in Northumberland *v.* A.-G., [1905] A. C. 406). In the case of a deed the succession is conferred as soon as it is executed, and in the case of a will, on the death of the testator (Lord Advocate *v.* Macalister, [1924] A. C. 586).

As to the time when a succession *arises* within the meaning of F. A. 1894, s. 18 (1) and F. A. 1910, s. 58 (3) and (4), *see* pages 329 and 353, and F. A. 1925, s. 24.

Although a successor may not become entitled in possession at once, Succession Duty is none the less payable (S. D. A. 1853, s. 20). For example : *A* by will gives to *B* for life a freehold ground rent of £20. On *A's* death *B* pays duty on the £20 for his life. Subsequently, the lease on which the ground rent is dependent falls in. *B* is then liable to further Succession Duty on the value of the difference between £20 and the rack rental of the property, his age being taken as at the date when the lease falls in (*see* A.-G. *v.* Bedford, [1926] 2 K. B. 184). The succession to the increased rental is deemed a part of the original succession and is still referred to the death of *A*, although duty is not payable until the actual date when the increased benefit accrues.

Similarly, if *A* by will gives real estate to his wife for life, or during widowhood, and then to *B*, and the widow re-marries, *B* is then liable to Succession Duty as on a succession on the death of *A* deferred until the re-marriage of the widow.

Joint Property.

Where a purchaser vests property in the joint names of himself and another person to the intent that the donor should receive the whole income during his life and on his death that the other person should become entitled to the property, Succession Duty is payable on the death of the donor on the whole property as on a succession from the donor (*ibid.*, s. 3). And where property is vested in persons as joint tenants, and one of them dies, and the joint tenancy has not been severed, so that his equitable share accrues to the survivor, Succession Duty is payable on the share accruing to the surviving joint tenant. In the case of joint tenants

a distinction is made between a title which confers a succession and one which does not. If it confers a succession the predecessor is the person who created the succession. If not, the predecessor is the deceased joint tenant. For instance: *A* by will gives a freehold house to *B* and *C* as joint tenants. On *A's* death *B* and *C* acquire the property jointly under a title conferring a succession derived from *A*, and therefore they will pay duty at a rate dependent on their relationship (if any) to *A*. If *B* then dies, *C* would succeed to his moiety and pay duty thereon as derived from *A*. If, however, in such a case *A* had died after the passing of the F. A. 1894, and his free estate did not exceed £1,000, the exemption from Succession Duty conferred by s. 16 would apply not only on his own death but also on the death of *B*. If, on the other hand, *B* and *C* had bought the property and had it conveyed to them as joint tenants, or it had been given to them jointly by gift *inter vivos*, they would not in such cases have acquired it under a title conferring a succession, and therefore if *B* died first, *C* would pay duty as on a succession derived from him. In the example first given Succession Duty is payable on *A's* death by *B* and *C* on the capital value of the property; and in both examples, on *B's* death Succession Duty is also payable on the capital value of the moiety accruing to *C*.

If a joint tenancy is severed before death by agreement or by sale of the property so that it does not pass to the survivor, Succession Duty is not payable under the joint tenancy, but the severable share of the deceased, if not disposed of by him in his lifetime, is, of course, liable to duty as part of his free estate.

In the case of joint property in land it should be noted that under the L. P. A. 1925, s. 36, the legal estate is now held upon trust for sale and no severance so as to create

a tenancy in common in land is permitted, but a joint tenant may still release his interest to the other joint tenants or may sever the equitable joint tenancy.

Policies.

Where a policy of assurance is assigned by way of gift by the assured to a donee and the assured pays the premiums to the date of death, Succession Duty is payable on the death of the assured, and this is so whether the donor has bound himself to pay the premiums or not, if in fact he does pay them. But if the premiums are paid by the donee after the assignment, or if the policy were fully paid, no Succession Duty would be payable (Ld. Adv. *v.* Robertson (or Fleming) (1895), 22 Rett. 568 ; [1897] A. C. 145).

Where in contemplation of marriage, a policy on the life of *A* the prospective husband was taken out by him, the premiums on which were to be paid by *B*, an uncle of the prospective wife, and the policy was settled on the usual trusts of a marriage settlement, and the first and subsequent premiums were duly paid by *B*, it was held that, looking at the substance and not the form of the transaction, *B* was the real predecessor and Succession Duty was payable on the death of the assured according to the relationship of the successors to *B* (A.-G. *v.* Public Trustee, [1920] 3 K. B. 675). The case of A.-G. (I.) *v.* Riall, [1906] 2 I. R. 122, where the facts were somewhat similar, was distinguished on the grounds that in the latter case, the policy was taken out and paid for by the prospective husband, and until the prospective marriage was his independent property, whereas in the case of A.-G. *v.* Public Trustee the policy was *ab initio* subject to a trust to go into the settlement, and was taken out by *A* on the footing that *B* should pay the first and subsequent premiums during the joint lives of the spouses.

Money payable under any engagement is expressly made liable to duty (S. D. A. 1853, s. 1). So where *A* covenants in a marriage settlement to pay a sum of money on his death, Succession Duty would be payable on *A's* death (Ld. Adv. *v.* Roberts's Trustees (1857), 20 Dun. 449, and A.-G. *v.* Montefiore (1888), 21 Q. B. D. 461). If however, in a settlement *A* had covenanted to pay a sum on his death and in the meantime an annuity equal to interest at an average rate per cent. on the covenant debt, Succession Duty is not payable on the covenantor's death, as the payment of the capital sum may be regarded as merely a change of investment. It follows that for the purposes of Succession Duty at £1 per cent. the "first succession" will arise on the death of the life tenant under the settlement.

If a succession is defeated by an earlier title no Succession Duty would be payable (A.-G. *v.* Selborne, [1902] 1 K. B. 388). Thus, if leaseholds or freeholds given by will to *A* are sold by the executors for payment of the testator's debts, no Succession Duty would be payable by *A*, because in such case he obtains no benefit from the succession. So also where joint tenants sever the equitable joint tenancy the claim for Succession Duty thereunder on the death of one is defeated.

Where real property is settled and there is a power to sell in the instrument creating the succession, and the property is sold before the death giving rise to the claim for duty, the charge of duty shifts to the proceeds of sale (S. D. A. 1853, s. 42), and *see* page 368.

Powers of Appointment.

Where a person has a general power of appointment over real property, the person to whom he appoints the property by will is liable for Succession Duty on the death

of the appointor, as on a succession derived from the appointor (S. D. A. 1853, s. 4, and *re* Wallop's Trusts, 33 L. J. Ch. 351). The result is the same if the appointment is made by deed during the appointor's lifetime, but is not to take effect until his death (A.-G. *v.* Upton, L. R. 1 Ex. 224). Where real property is given by will to a person for life and on his death to such persons as he shall by deed or will appoint, and in default to other persons, Succession Duty is payable on the capital value of the property and not merely on the appointor's life interest, as he is competent to dispose (F. A. 1894, s. 18), and further duty is payable under the appointor's will on his exercising the power. If, however, he does not exercise the power and it passes to the persons entitled in default, Succession Duty is payable under the original title according to the relationship of such persons to the donor of the power.

Where the power of appointment is limited, *i.e.*, where the donee can only appoint to certain persons or to members of a certain class, the appointees are regarded as taking their succession from the person who created the power (S. D. A. 1853, s. 4), and he is regarded as the predecessor and the appointees pay duty according to their relationship to him. In the case of real estate, duty is paid in the first instance in respect of the donee's life interest and on his death further duty is paid on the capital value of the property by the persons to whom he appoints, or if he does not exercise his power by the persons entitled in default. Thus *A* by will gives real estate to *B* for life and on his death to the children of *C* in such shares as *B* shall appoint. On *A's* death *B* pays duty on the value of his life interest and on his death further Succession Duty is payable by the children to whom he appoints as on a succession derived, not from *B*, but from *A*, who created the power.

The devise of real estate to a child or other issue of the testator, who dies before him, leaving issue, is preserved from lapse by s. 33 of the Wills Act, 1833. The object is achieved by making the property devolve as if the child had died immediately after the testator, that is, under the child's will or intestacy. Two payments of Succession Duty may thus be involved, first, in connection with the death of the testator, in respect of the succession taken by the child (he being treated as having survived the testator and the latter being of course the predecessor), and second, in connection with the death of the child in respect of the succession taken by the person entitled under the child's will or intestacy (the child being the predecessor). But if Estate Duty had been paid, the £1 per cent. Succession Duty is not claimed on the latter succession, even if the child's estate in possession at his death and the accretion under the above provision were each over £15,000 in value (*see also* pages 8 and 236).

Cesser of Outstanding Interests.

Where property is subject to any charge, estate or interest determinable on death (such as a jointure, rent charge, or annuity), the increase of benefit accruing on the extinction or determination of the charge is deemed a succession derived from the person from whom the successor derived his title (S. D. A. 1853, s. 5). For example: *A* by deed gives property, subject to an annuity of £50 to *C*, to *B*. On the death of *C* in *B's* lifetime, Succession Duty would be payable on the cesser of his annuity as derived from *A*. This provision does not apply to an annuity or terminable charge created by the owner of property where such annuity or charge ceases on a death during his lifetime (*ibid.*, s. 12). The successor in such a case is his own predecessor, and therefore Succession Duty is not payable. Nor does it

apply where the transaction is as regards the outstanding interest based on full consideration in money or money's worth.

The above provision deals with duty in respect of an outstanding charge where the *property* itself may not be liable to duty. Supplementing this, provision is also made for a *succession* which is subject to such a charge. For where a *succession* is subject to any prior charge, estate, or interest not created by the successor himself, by reason whereof he does not at once become entitled to the full enjoyment of his succession, it is provided that duty is to be paid on the increased value accruing on the determination of such charge, estate or interest at the time of such determination. But no duty is to be paid on the determination of any lease at a rack rent (S. D. A. 1853, s. 20). This generally applies where the successor takes for life, and some annuity, jointure, or other charge, not created by him, is in existence when he succeeds. In such case, he deducts in his account the annual equivalent of the annuity, jointure, or charge, and on the cesser thereof renders a supplemental account. The duty on the supplemental account is subject to the same provisions as to discount and payment by instalments as the duty payable on the original account. Thus on the death of *A*, *B* succeeds for life to real property, subject to a jointure created by a predecessor in title in favour of *C*; *B* renders his account on the death of *A* and deducts the jointure against the annual value of the property. On the death of *C* he renders a supplemental account for duty on the further benefit accruing to him by the cesser of her jointure. Similarly, where a successor succeeds to freehold ground rents for life, he pays duty on the value for his life of the ground rent, and when the lease falls in he renders a supplemental account for the difference between the then annual value of the property and the ground rent, his age

being taken at the date when the lease terminated (A.-G. *v.* Mander, 65 L. J. Q. B. 246 and A.-G. *v.* Bedford, *supra*, page 309). If, however, the property is sold and the original successor dies before the annuity or lease has fallen in, no Succession Duty would be payable on the death of annuitant or the falling in of the lease.

The rate of Succession Duty in cases of this kind is the same as that paid on the original succession of which the accruing benefit forms part, and would not be subject to any statutory increase in the rates of duty made between the date of the original succession and the date when the increased benefit falls into possession.

Where the charge was created by the successor himself before he became entitled in possession to his succession, he could not make any deduction in his account unless the charge were created in such a way as to create a new succession (*see* S. D. A. 1853, s. 20, and *re* Peyton, 7 H. & N. 265).

Where real property is subject to a lease and the successor for life has not therefore paid duty on the full yearly value, he is chargeable with duty upon his interest in any fine or other consideration which may be received for the renewal of such lease or the grant of any reversionary lease (S. D. A. 1853, s. 25). For instance, before the lease falls in, a successor may agree to renew it or to grant a reversionary lease at the same rent, but subject to payment of a lump sum. In such case, further Succession Duty is payable on his interest in such sum.

Where the successor takes an absolute interest in real estate, it should be borne in mind that duty is payable on the capital value of the property (F. A. 1894, s. 18), and in the case of ground rents the then value of the increased benefit to accrue on the determination of the lease is in all cases included in the valuation of the property. The duty paid, therefore, covers both the value of the ground

rent and the reversion expectant on the determination of the lease and a further account is not necessary on the lease falling in. Similarly, in the case of property which a successor takes absolutely subject to an annuity or rent charge, if the value only of the annuity or rent charge was deducted against the capital value of the property and duty paid on the balance, no further Succession Duty would be payable on the cesser of the annuity or rent charge. But if deduction had been taken in the original account for a capital sum or "slice" sufficient to produce the annuity or rent charge, then further Succession Duty would be payable when such charge or annuity terminated in respect of the deduction so made.

The correct method of dealing with deductions in respect of annuities is noted at page 105 *et seq.* in connection with Estate Duty and the same principles apply to Succession Duty where the successor is competent to dispose.

Where mortgages on settled property are paid off by the tenant for life or are released by the incumbrancer for the benefit of the persons entitled under the settlement, the tenant for life or incumbrancer is to be regarded as the predecessor to the extent of the beneficial interest attributable to the extinction of the mortgages or charges so paid off or released.

Where a successor derives his succession from more predecessors than one and the interest derived from each cannot be distinguished, the Commissioners may agree with the successor as to the duty payable, and in default of agreement the successor shall be deemed to take equally from each predecessor (S. D. A. 1853, s. 13).

Foreign Property.

It has already been shown that Legacy Duty is not payable on the personal estate (not including leaseholds) of a person who dies domiciled abroad, whether such

personal estate is situate in this country or not (*see* page 231); neither is Succession Duty payable in such circumstances (Wallace *v.* A.-G., L. R. 1 Ch. App. 1), but this freedom from duty only applies to absolute gifts which are satisfied by the process of administration. Where moveable property is settled, whether by deed or will, Succession Duty may be payable on the death of a life tenant. In such cases the claim depends upon whether the forum for administering the trusts of the instrument is in Great Britain or not. If it is, the death of a life tenant will give rise to a claim for Succession Duty. As a general rule the forum of administration may be regarded as British :—

(1) Where the will or settlement was British in its inception and on the death of the life tenant the trustees are resident in this country (A.-G. *v.* Campbell, L. R. 5 H. L. C. 524).

(2) Where, though the will or settlement was not British in inception, on the death of the life tenant all the trustees and beneficiaries are resident in Great Britain although the fund is locally situate abroad (*re* Cigala's Settlement Funds (1878), 7 Ch. D. 351).

(3) Where in the same case, all the trustees are resident in Great Britain and the funds are also situate there (though the beneficiaries may be abroad) (A.-G. *v.* Jewish Colonisation Syndicate, [1901] 1 K. B. 123, and A.-G. *v.* Felce (1894), 10 T. L. R. 337).

Thus *A*, a testator domiciled abroad, by will in English form, gives personal estate to trustees resident in this country upon trust for *B* for life and on his death to *C* absolutely, and directs his trustees to invest the property in British securities. Neither Legacy Duty nor Succession

Duty is payable on *A's* death, his domicile being foreign. But if on the death of *B* it is found that the property is invested in this country in the names of trustees resident here, Succession Duty is payable (A.-G. *v.* Campbell, *supra*). For to obtain possession of it the beneficiaries, whether foreigners or not, would have to resort to the Courts of this country. The result would be the same, even though there were no direction to invest the property in British securities, if in fact, at the death of *B* the property were so invested (Thompson *v.* Birch (1876), W. N. 177, 278).

Again *A*, domiciled abroad, by deed made in English form, settled securities of a foreign government upon herself for life, with remainder to her husband (an Italian) for life, with remainder to their children, and appointed trustees resident in this country. On the death of the husband, who survived his wife, the children who were domiciled abroad succeeded, and Succession Duty was payable as the settlement fell to be construed by the English Courts, and, the trustees being resident here, the beneficiaries could only compel them to transfer the securities by resorting to such Courts (*re* Cigala's Settlement Trusts (1878), 7 Ch. D. 351).

Similarly, if at the death the property, originally foreign, is found to be invested in the names of trustees resident here, Succession Duty is payable (Thompson *v.* Birch, *supra*). But if the *only* British element is the fact that on the death of a life tenant the settled funds are temporarily under the control of the British Court, Succession Duty would not be chargeable.

Where the rate of Succession Duty is £1 per cent. "the first succession" in cases of this kind is considered to arise on the death which gives rise to the claim for Succession Duty (Hamilton *v.* Ld. Adv., [1920] A. C. 50, and F. A. 1925, s. 24).

Where the deceased, even though a domiciled foreigner, has a general power of appointment over personal property under an English settlement made by deed or will, the principles as set out above do not exactly apply, for the appointment in such case is read into the instrument creating it, and in effect the beneficiaries become entitled under such instrument. The fund appointed is not technically the property of the deceased; he has only a power of disposition over it and the beneficiaries become entitled under a British settlement and, even though the appointor is domiciled abroad, Succession Duty is payable (*re* Lovelace (1859), 4 De G. & J. 340, and *re* Wallop's Trusts (1864), 33 L. J. Ch. 351).

The above remarks do not apply to real estate or leaseholds. If such property is situate in this country it is liable to Succession Duty whether the owner dies domiciled abroad or whether it is vested in foreign trustees under a foreign settlement or not. If it is situate abroad it is not liable to Succession Duty even though the owner is domiciled here or it passes under an English settlement. Where, however, foreign immoveable property is settled by an English instrument upon trust for sale with a discretionary power to postpone the sale and on any death it is found vested in trustees resident in this country, Succession Duty would be chargeable even though no sale had in fact taken place (A.-G. *v.* Johnson and Others, [1907] 2 K. B. 885). The settlement is, in fact, of equitable personal property, and the succession is therefore not to foreign immoveable property but to an English *chose in action*.

There would, however, be no such claim where the trust for sale did not arise until the death of the life tenant, or where there was a mere power to sell or a trust to sell with the consent or at the request of the life tenant, unless a sale has been made during his lifetime. Nor would Succes-

sion Duty be payable where on the death of the life tenant the trustees were all resident abroad; and even where there was a trustee resident in Great Britain, if the settlement was not British in its inception, or if the immoveable property were not subject to the doctrine of conversion, it is doubtful whether any claim would arise.

To prevent dual taxation to Succession Duty, or to Succession Duty and Legacy Duty, where there has been a change of forum of administration of a settlement as between Great Britain and the Irish Free State, the Relief in respect of Double Taxation (Succession and Legacy Duty) (Irish Free State) Declaration, 1926 (S. R. & O. 1926, No. 975), has provided that where the Commissioners on Inland Revenue are satisfied that the forum of administration of any particular settlement is in the Irish Free State, and that under the settlement in question Succession Duty is payable in that State by reason of a death of a person dying on or after the 1st April, 1923, in respect of any settled personal or moveable property, they shall allow a sum equal to the amount of that duty to be deducted from the British Legacy or Succession Duty payable in respect of the same property on the same death. The Declaration in question, which contains reciprocal provisions in converse cases, is made under the powers conferred by s. 5 of the Irish Free State (Consequential Provisions) Act, 1922.

CHAPTER XIII.

THE RATES AND AMOUNT OF SUCCESSION DUTY.

THE rates of Succession Duty now payable (S. D. A. 1853, s. 10, as amended by F. A. 1910, s. 58) are as follows :—

I.

Relationship of Successor to Predecessor.	Rate.
Husband or wife, children and their lineal descendants, and the father or mother or any lineal ancestor, or the husband or wife of any such person	£1 per cent.
Brothers and sisters and their descendants or the husband or wife of any such person	£5 per cent.
Persons in any other degree of collateral relationship and strangers in blood, including those related only by natural ties	£10 per cent.

As to the husband or wife of a relative, the observations regarding Legacy Duty on page 244 are applicable equally to Succession Duty.

As regards children adopted in accordance with the Adoption of Children Act, 1926, *see* page 236.

II.

It may happen, however, in certain cases that Estate Duty is not payable on the property liable to Succession Duty and the above rates would then be increased to £1. 10s. per cent., £6. 10s. per cent., and £11. 10s. per cent. (*see* Customs and Inland Revenue Act, 1888, s. 21 (1), and F. A. 1894, s. 1 (1st Schedule)). For example, *A* by deed settles £10,000 on himself for life with remainder to his brother *B*. Subsequently he releases his life interest more than three years before his death, and the fund is paid over to *B*. On *A's* death, after the passing of the F. A. 1910, Succession Duty is payable at £6. 10s. per cent. and not at £5 per cent., as would have been the case if Estate Duty had been payable.

The revised rates in Table I were established by the last-mentioned Act, and it may happen that an expectant succession has been sold before the date when that Act came into operation : viz., 30th April, 1909. It is provided in such a case that the purchaser is not to be subject to any additional burden imposed by the F. A. 1910, and he is therefore liable only to pay duty at the rates formerly in force (F. A. 1910, s. 64). These rates also apply where the *first* succession under any disposition had arisen before the above date. They are as follows (S. D. A. 1853, s. 10) :—

III.

Relationship of Successor to Predecessor.	Rate.
Children and their lineal descendants, and the father or mother or any lineal ancestor, or the husband or wife of any such person. (*This rate was not payable on property on which Estate Duty had been paid—F. A.* 1894, *s.* 1, 1*st Schedule*, 5*th par.*)	£1 per cent.
Brothers and sisters and their descendants or the husband or wife of any such person	£3 per cent.
Brothers and sisters of the father or mother and their descendants or the husband or wife of any such person	£5 per cent.
Brothers and sisters of a grandfather or grandmother and their descendants or the husband or wife of any such person	£6 per cent.
Persons in any other degree of relationship and strangers in blood, including persons related only by natural ties	£10 per cent.

With regard to the husband or wife of a relative the remarks relating to Legacy Duty on page 244, are again applicable.

Where Estate Duty was not payable, these rates were increased by £1. 10s. per cent., except the £1 per cent. duty, which was increased to £1. 10s. per cent. (Customs and Inland Revenue Act, 1888, s. 21 (1)).

Liberal exemptions from the £1 per cent. duty, referred to in Table I, are provided for. Thus it is not payable—

(*a*) Where the principal value of the property passing on the death of the "*deceased*" in respect of which Estate Duty is payable (other than

property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed £15,000, whatever may be the value of the legacy or succession (F. A. 1910, s. 58 (2) (*a*)).

This exemption is far reaching in its practical application, for it must be read in conjunction with the F. A. 1910, s. 58 (3), which as explained by F. A. 1925, s. 24, limits the meaning of the word "*deceased*" as therein employed (1) in the case of a legacy, to the testator (including a person making a donation *mortis causa*) or intestate, (2) in the case of a succession arising through devolution by law, to the person on whose death the succession arises, and (3) in the case of a succession arising under a disposition, to the person on whose death the first succession arises thereunder, and further under F. A. 1925, s. 24, a succession arises on the death when the successor becomes beneficially entitled in possession. (As to the meaning of the terms "devolution" and "disposition" *see* pages 304 and 305.)

Thus for example: suppose on *A's* death the following properties pass to his widow and children:—

	£
(1) His free estate, value	3,000
(2) Property settled by *A* on his marriage on himself for life, value	8,000
(3) Property settled by the will of his father on *A* for life	16,000
(4) Policy in the Customs Fund, value ..	200
Total ..	£27,200

The total exceeds £15,000, but No. 3 is not to be taken into account as in relation to this property *A* is not the "*deceased*" within the statutory meaning of that term as defined in s. 58 of the F. A. 1910, for the purpose of the £15,000 limit. No. 4 may also be disregarded, as the policy moneys constitute property in which the deceased never had an interest. The total value to be taken into account is £11,000, and therefore Succession Duty at £1 per cent. is not payable on *A's* death by his wife or children on Nos. 1, 2 and 4, nor is Legacy Duty.

It is not necessary that the property chargeable with Succession Duty at £1 per cent. should itself be liable to Estate Duty, provided the limit of £15,000 is otherwise exceeded.

In considering whether the limit of £15,000 is exceeded, the following should not be taken into account: (1) Timber (F. A. 1912, s. 9); (2) The value of an accruer under s. 33 of the Wills Act, 1837, as it had no value at the date of the deceased beneficiary's death; (3) The free estate of a common soldier, sailor or airman, as it would not constitute "property passing on the death of the deceased in respect of which Estate Duty is payable" (F. A. 1894, s. 8 (1)); (4) A legacy or succession under the will of a person dying before 30th April, 1909, or a succession under a disposition other than a will under which the first succession had arisen before that date; (5) Property of which the deceased was tenant for life under the will of a person dying on or after the above date and property of which he was life tenant under any other disposition where the first succession thereunder had arisen by a death on or after 30th April, 1909.

On the other hand, the expression "property passing" is considered to include property "deemed to pass" within the meaning of the F. A. 1894, and also all reversionary interests.

The above provision fixes generally the conditions in which the £1 per cent. Succession Duty is not payable at all, but a successor may also be relieved by reason of his *individual* benefit not amounting in value to a certain sum, even though the limit of £15,000 is exceeded. Thus Succession Duty at £1 per cent. is not payable—

(*b*) (1) Where the amount or value of the legacy or succession with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed £1,000, whatever may be the principal value of such property (F. A. 1910, s. 58 (2) (*b*)); and

(2) Where the beneficiary is the widow or an infant child (but not an infant grandchild) and the amount or value of the legacy or succession with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed £2,000, whatever may be the principal value of the property (F. A. 1910, s. 58 (2) (*c*)).

It will be observed that here the test of exemption is whether the aggregate value of all benefits taken by the same beneficiary and derived from one and the same person, whether as a legacy or a succession, or both, and whether in possession or reversion, exceeds £1,000, or £2,000 in the case of a widow or infant child. The value of such benefit is the value for duty as ascertained under the L. D. and S. D. Acts, *i.e.*, in the case of a legacy the value at the date of payment or retainer, or where duty is payable by way of annuity the value thereof according to the tables in the S. D. A. 1853; and in the case of a succession the value at the time the successor or any persons in his right become entitled in possession or to the receipt of the rents and profits. Thus where the successor takes absolutely, the

value is ascertained after deducting Estate Duty and costs of raising same, and where he takes for life or for a limited period, the value of such interest as ascertained for payment of Succession Duty should be brought into account.

The value of the benefit for this purpose would, however, only include such legacies and successions as are subject to British duty, and therefore the following would not be taken into account :—

(*a*) The value of a life interest in articles of furniture, etc., as such interest is not chargeable with duty.

(*b*) In the case of a testator domiciled abroad possessed of real estate in England, his English and foreign personalty, as the latter are not subject to Legacy Duty in view of the domicile.

(*c*) The estate up to £5,000 on which duty is remitted in the case of members of His Majesty's combatant forces killed in the Great War or subsequently.

Where a person takes an immediate benefit under £1,000 in value plus a vested reversionary interest in other property derived from the same disponer, and the present value of the whole exceeds £1,000, duty is payable at once on the immediate benefit. The duty on the reversion may also be paid or may be postponed until the reversion falls into possession. But if the present value of the whole does not exceed £1,000, then duty is not immediately payable and interest is not chargeable until the benefit has amounted to £1,000. If the reversion is contingent it should be ignored unless and until it falls into possession. Then, if its value and the value of the immediate benefit are found to exceed £1,000, duty on the whole becomes payable.

In the case of personalty settled upon persons all liable to the same rate, if it can be postulated for certain that the

value of the legacy or succession taken by each person in the series is of taxable amount, the £1 per cent. duty is payable at once on the capital, otherwise this duty is, in strictness, payable only on each individual benefit as and when it becomes an interest in possession. In such cases, however, in order to save trouble and to dispose of the claim once and for all, it is generally found convenient to compound the duty by payment at once on the capital. As a rule, this arrangement is regarded as final, but if the right to a revision on the life tenant's death is reserved it would be open to the Commissioners of Inland Revenue to claim additional duty on that event on any increase in value in the assets then divisible.

The £2,000 value applicable to the widow or an infant child should be ascertained in the same way as the £1,000 value. A minor should be treated as a person taking a legacy or succession if his interest is vested or, if the interest is contingent, provided that he is entitled to interest meantime. If the value is under £2,000, but on attaining twenty-one he receives any other benefit derived from the same person, which, added to the vested interest, makes up in the aggregate an amount which exceeds £2,000, the exemption as to the vested interest will cease and duty will then be leviable on the aggregate benefit. The proviso as to the £2,000 limit does not apply to grandchildren.

The revised rates of Succession Duty as established by the F. A. 1910 are not payable under wills or dispositions where the *first* succession arose before that Act was passed (F. A. 1910, s. 58 (3) and (4)).

The question when a first succession arises has been the subject of somewhat conflicting opinion. The meaning to be attached to this phrase as used in s. 58 (3) and (4), F. A. 1910, was considered by the House of Lords

in the case of Ld. Adv. *v.* Macalister, [1924] A. C. 586, where a testator who died in 1900, entitled in fee, subject to the life interest of his mother, to heritable property in Scotland, gave it by his will to a first cousin in fee. The testator's mother died after the passing of F. A. 1910 and Succession Duty then became payable in respect of the property either at £10 per cent. if the *first* succession arose on the death of his mother or at £5 per cent. if it arose on the death of the testator. The House of Lords decided that the first succession under the testator's will arose on his death when the successor became *entitled* to his succession, and not on the death of the life tenant, when beneficial possession accrued. The correct rate of duty was therefore £5 per cent. In consequence of this decision it was provided by s. 24, F. A. 1925, which is declaratory and retrospective, that for the purposes of s. 58 a succession shall be deemed to arise on the happening of the death by reason of which the successor, or any person in his right or on his behalf, becomes entitled in possession to the succession or to the receipt of the income or profits thereof. It may now therefore be taken that a first succession under a will or intestacy arises on the death of the testator or intestate except in the case of real estate in reversion, in which case the first succession under the will or intestacy would arise on the death which lets the property into possession. And under a settlement or disposition *inter vivos* the first succession arises on the first death, in consequence of which any successor becomes entitled to any benefit in possession. In the case of a disentail and resettlement, the first succession arises under the resettlement on death of the original tenant for life (S. D. A., 1853, s. 12, and *see* Parr *v.* A.-G., [1926] A. C. 239.)

It will be observed that under the revised scale all successors more distantly related than husband or wife,

lineal issue, lineal ancestors or brothers and sisters and their descendants, are liable to the same rate as strangers in blood to the predecessor.

Neither the new £5 per cent. nor the new £10 per cent. rate is affected by the exemptions which apply to the £1 per cent. rate where the property passing does not exceed £15,000 or the total individual benefit does not exceed £1,000 or £2,000.

As regards the *amount* of Succession Duty payable on free estates exceeding £1,000, the provisions of the F. A. 1914, s. 13 (2), should be borne in mind. It limits the total sum payable for Legacy Duty and Succession Duty to the amount by which the net value of such estate for Estate Duty exceeds £1,000 (*see* page 283).

Compromises.

If there is a conflict between claimants to a deceased person's real property and a compromise is arranged, the claim for Succession Duty does not follow the compromise but is payable in accordance with the rights of the parties as determined by the title which is allowed to stand (Lord Advocate *v.* Gordon (1895), 32 S. L. R. 532). As regards compromises relating to personal estate, *see* page 253 as to Legacy Duty. Similar remarks apply to Succession Duty (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 23).

Basis of Calculation.

Succession Duty is calculated in two ways—(*a*) where the successor is entitled to an absolute interest or is competent to dispose as he thinks fit, on the capital value of the property, and (*b*) where he is entitled to less than an absolute interest on the actual value of such interest calculated according to certain tables in the S. D. A. 1853. These tables are based on the average expectancy of life, and interest is taken at £4 per cent. (For Table I, *see* page 419.)

(*a*) *Where the successor is entitled to an absolute interest.* A distinction must be made between real and leasehold property and other property.

In the case of real and leasehold property, Succession Duty is payable on the capital value as for Estate Duty, after deducting Estate Duty (except in the case of leaseholds under a will) and the expenses of raising and paying the same (F. A. 1894, s. 18). The duty may be paid by the same instalments as Estate Duty on real estate: viz., eight yearly or sixteen half-yearly instalments, the first being payable at the expiration of one year from the death, and if the duty is paid within that time discount is allowed even where the property is sold. After the expiration of the year, interest is payable on the duty for the time being unpaid.

On a sale or mortgage of land in England or Wales all instalments become payable if the charge for duty is overreached by the conveyance or mortgage, as would be the case where the charge had not been registered as a land charge (L. P. A. 1925, s. 17 (3), and also L. R. A. 1923, s. 73 (6)). If the effect is that a greater amount is paid to the Revenue than would have been payable if the duty had continued to be paid by instalments, the excess is to be repaid by the Commissioners (*see* provisoes to above subsections, and also pages 154 and 156).

Where there is a direction to sell real and leasehold property, Succession Duty is payable as on a succession to personal property (S. D. A. 1853, s. 29, and *see infra*), and the duty cannot be paid by instalments. The position is the same with regard to a share of land held under a tenancy in common. Such property is now subject to a trust for sale and is not included in the definitions of "Land" in the L. P. A. 1925.

It should be noted that the Estate Duty on real estate is a charge on the property (F. A. 1894, s. 9 (1)), and is

therefore deductible in the succession account, but in the case of leasehold property under a will Estate Duty is not a charge on the property, but is payable by the executors out of the residuary estate (*re* Culverhouse ; Cook *v.* Culverhouse, [1896] 2 Ch. 251). It is not, therefore, deductible in the succession account. Settlement Estate Duty, however (where payable), was a charge in both cases, and was deductible in a succession account of leaseholds.

Where, however, the Estate Duty is payable under a deed or some other non-testamentary disposition or under a will on the death of a life tenant, it may be deducted against leaseholds as well as real estate, because the leaseholds do not in such cases constitute property passing to the executor of the deceased (*i.e.*, the deceased life tenant) as such.

Should there be a direction in the will that a gift of property on which the duties are a charge is to be free of duty, deduction may be taken against the residuary personal estate, but the direction in the will is regarded as a legacy and is taxable as such with Legacy Duty (*cf.* A. E. A. 1925, s. 55 (1) (ix)).

Should the successor elect to pay by instalments and die before all the instalments are paid, the unpaid instalments remain a charge on the property (*see* F. A. 1894, s. 18 (1)), and are payable by the succeeding owner as well as any further duties payable in consequence of the successor's death.

Agricultural Property.

Formerly, in the case of property which was purely agricultural the value for Succession Duty was limited to twenty-five times the gross assessment to property tax under Schedule A, after deducting from such assessment necessary outgoings such as repairs, insurance, etc., and expenses of management not exceeding £5 per cent. (F. A. 1894, s. 18 (2)).

This limitation was provided because agricultural property sometimes had a fictitious value owing to extraneous circumstances, such as being near sporting estates, and it was thought unfair to charge Succession Duty on the full value in such cases. Now, however, Succession Duty is in all cases, where the successor is competent to dispose, payable on the full market value (F. A. 1910, s. 60 (1)), except that where there are labourers' cottages (occupied by persons employed solely for agricultural purposes), which have a special value owing to their suitability as country cottages for townspeople or others, such special value has to be disregarded (F. A. 1911, s. 18).

Timber.

As has been explained in the case of Estate Duty, where the property includes land on which timber, trees, or wood are growing, Succession Duty is to be paid on the net sums, after deducting Estate Duty and necessary outgoings, which may from time to time be received from the sale of the timber, etc., when felled, until the property again becomes liable to Succession Duty by a further death (F. A. 1910, s. 61 (5), as amended by F. A. 1912, s. 9). Interest at £4 per cent. is payable on the duty from the date when the moneys are received. If, however, such timber, trees, or wood are sold unfelled either with or apart from the land, Succession Duty is payable at once on the principal value as at the date of death after deducting Estate Duty, but without any deduction for outgoings. The Succession Duty (if any) already paid in respect of periodical sales is, however, to be allowed for in calculating the duty payable on such sale (*see* F. A. 1910, proviso to s. 61 (5)); but if and as soon as the aggregate net amount of the periodical sales reaches the original value placed on the timber at the date of death, no further Succession Duty is payable on timber in connection with that death. The

incidence of Succession Duty is similar to that of Estate Duty, as to which *see* page 114.

Necessary outgoings (which should not in any case exceed £25 per cent. of the gross proceeds of sale) include expenses of selling, felling, and carting, restoring fences, ditches, gates, etc., if borne by the vendor, expenses of forestry for the year in which the sale takes place, expenses of replanting in place of timber sold and felled on a timber estate, but not rates, as woodlands are only assessed for rates on the land in its natural and unimproved state or in respect of its value for sporting or other special purposes or for underwood (*see* Westmorland *v.* Southwick & Oundle (1877), 36 L. T. 108), nor land tax, tithe, chief rents, rent or insurance. The Commissioners have no power to insist upon payment of the duty in full at the date of death by way of commutation, but, by arrangement, payment may be made upon the value at the death, and in that case, periodical accounts would not be required. Moneys realised from the sales of underwood, when cut, are not liable to Succession Duty (*see* page 114), nor is timber felled and used for estate purposes.

In the case of personal property, other than leaseholds, where the successor takes an absolute interest, Succession Duty is payable on the same value as for Estate Duty, subject to a deduction for Estate Duty. The duty is payable in full as from the death and cannot be paid by instalments, and interest is charged on the duty from the death. Duty is payable in the same way in the case of real and leasehold property directed to be sold, even though a sale may not have taken place.

As in the case of legacies given to persons in succession, all liable to the same rate of duty, Succession Duty is also payable on the *corpus* of personal estate where the successor

does not take absolutely, but the property is settled upon persons liable to the same rate of duty (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 12). For example: *A* by deed dated June, 1900, settles £4,000 on himself for life, and then on his niece *B* for life, and on her death on her husband *C* for life, and on the death of the survivor on their children equally. On the death of *A* in October, 1914, as all the beneficiaries were liable to the same rate of duty, Succession Duty would be assessed at £5 per cent. on the *corpus* of the £4,000, after deducting Estate Duty. No further Succession Duty would then be payable on the deaths of *B* and *C*. In view of F. A. 1914, s. 14, however, a further Estate Duty would become payable on the death of *B*.

(*b*) *Where the successor takes for life or limited interest.* In these cases the interest of the successor is capitalized according to his expectancy of life at the date when he becomes entitled in possession. The net annual value which the successor may be expected to receive from the property is ascertained, and the capital value thereof is calculated by reference to the tables given in the S. D. A. 1853, on the basis of his completed age at the time he becomes entitled in possession (*see* Table I, page 419). If his interest is for the joint lives of himself and another, the value is calculated according to Table II in the above Act. If his interest is not for life but for a limited period, then the value is calculated for that period as for so many years certain according to Table III in the above Act. No allowance is made for any contingency upon the happening of which the property may pass to some other person, but if the event does happen, the successor is entitled to a return of so much Succession Duty as would reduce it to the amount he would have paid if the duty had been assessed in respect of the actual duration of his interest (S. D. A. 1853, s. 36).

Thus, if *B* succeeds to property for her life or until she re-marries, Succession Duty in such cases is assessed on the value of the net income from the property for her life without regard to the contingency of re-marriage. If, however, she does re-marry, a re-calculation has to be made. For instance, suppose the net annual value is £50 and *B's* age at the date she succeeds is forty. Succession Duty would be payable on £743. 15s., that being the value of an annuity of £50 for a life aged forty. At forty-five *B* re-marries, so that her interest determines after five years. The value of such interest for five years certain would only be £222. 11s. 9d. and therefore she would be entitled to a return of Succession Duty on the difference between £743. 15s. and £222. 11s. 9d.

Again, if *A*, aged fifty, succeeds for life to property worth £100 per annum, subject to an annuity of £50 to *B* on his attaining twenty-one, duty is taken in the first instance on the

	£ s. d.	£ s. d.
Value of the £100 per annum for the life of *A* without regard to the contingency of *B* attaining twenty-one ..		1,242 19 6
If, however, *B* attained twenty-one, say after ten years, the actual *quantum* of *A's* interest would have been £50 per annum for his whole life	621 9 9	
And £50 per annum for ten years certain, per Table III	405 10 9	
Total on which Succession Duty is payable	————	1,027 0 6
And Succession Duty would be returnable on the difference		£215 19 0

Succession Duty would also be payable on the annuity of £50, to which *B* became entitled on attaining the age of twenty-one.

In the case of personal estate, the actual income produced by the property without deduction for income tax should be accounted for. Whatever the property consists of, whether real estate, leaseholds, or any other form of property, if there is a direction to sell and the property has been sold and the proceeds invested before the first instalment of duty becomes due, the actual income of the investments should be accounted for. But if no sale has taken place, or if there has been a sale but the proceeds have not been invested, the income which the capital would produce if invested in trustee securities should as a general rule be accounted for—say at £4$\frac{3}{4}$ per cent. Deduction may be taken in respect of Estate Duty. Unless a part of the settled fund has been applied in payment of that duty, the allowance may usually be taken by deducting against the income a percentage at the rate of Estate Duty. The duty is payable by four equal yearly instalments, and if the successor dies before all are payable the instalments which had not become due are not payable (S. D. A. 1853, s. 32). If duty is paid in full, discount for two and half years, less the time which has elapsed since the death is allowed. Payment in full does not prejudice the right to claim a return of duty should the successor die before the period for payment by instalments has expired. It will be noted that the Succession Duty in such cases is payable in a similar way to Legacy Duty, which is chargeable by way of annuity, and the provisions as to assessment of Legacy Duty are in fact incorporated into the S. D. A. 1853 (by s. 32).

As already explained (page 335), where a successor takes for life and those entitled on his death are liable to the same rate of duty, the Succession Duty is assessed at once on the *corpus* of the fund and not by way of annuity.

In the case of real estate and leaseholds, the gross annual value should first be ascertained (S. D. A. 1853, s. 21), and this is defined as the annual rent which a tenant might reasonably be expected, taking one year with another, to pay, if the tenant undertook to pay all usual tenant's rates and taxes and the landlord undertook to bear the cost of repairs, insurance, and other expenses (if any) necessary to maintain the property in a state to command that rent. From this gross value, necessary outgoings, excluding tenant's payments, but including insurance, repairs, and other payments by the landlord, are deducted (*ibid.*, s. 22). In practice, the net annual value is generally determined from the actual rent at which the property is let, or if it is not let, the *gross* assessment to property tax or, if not assessed, the *gross* assessment to poor rate, after deduction of all annual outgoings paid by the owner as above. Where, however, repairs are paid for by the tenant, as in the case of a repairing lease, they may not be deducted, nor may rates as a general rule, except where, in the case of small property, they are paid by the owner. Where the account is based on the gross assessment to property tax, tithe rent charge is not a good deduction if, as is usually the case, it is separately assessed, and therefore allowed for in the gross assessment. In no case should income or property tax be deducted in a succession account (*re* Elwes, 3 H. & N. 719), nor should expenses of management (*re* Cowley (1866), L. R. 1 Ex. 288).

Where there is a direction to sell, or where the property is a share held under a tenancy in common, the duty is payable in the same way as indicated above with regard to personal estate.

A percentage at the current rate for trust securities (at present £4¾ per cent.) on the Estate Duty (except in the case of leaseholds under a will, as to which *see* page 333)

may be deducted. Deduction may also be taken for annuities, rent charges or jointures, and £4¾ per cent. on legacies, portions or other capital sums, charged on the property, and, if the testator's personal estate is deficient, £4¾ per cent. on the amount of the deficiency may be deducted in the succession account of his residuary real estate.

In the case of copyholds, a further deduction could be taken in respect of any fines, fees, or other payments incident to the tenure and payable on the death to the lord of the manor (S. D. A. 1853, s. 28). The proper deduction is the annual sum which for the life of the successor or for such shorter period as the successor's interest may continue, would equal in value the amount of such payments. Thus, suppose the successor's age were forty-eight, and the payments for fines amounted to £25 : the equivalent annual value, according to the tables, would be £1. 18s. 6d., and that sum could be deducted in the account. Although copyhold property has been enfranchised by the Law of Property Act, 1922, s. 128, deduction may still be made on the same basis where the manorial payments are still being made or where an annual sum for a period of years has been agreed upon for their redemption. Where a capital sum for redemption has been agreed upon and is secured upon the property, £4¾ per cent. thereon should be deducted.

Allowance is also to be made for all incumbrances (except those created or incurred by the successor), and also in respect of any moneys which the successor before possession may have laid out in substantial repairs or permanent improvements of the property comprised in the succession (S. D. A. 1853, s. 34). These would not include payments for ordinary repairs and the annual upkeep of the property, as the tenant for life is liable for such payments. In the case of a mortgage, the interest annually payable would be

deductible from the annual value; and in the case of moneys spent in improvements, £4¾ per cent. on the sum expended.

The duty is payable as follows :—

(*a*) By eight equal half-yearly instalments, the first payable at the end of a year after the successor becomes entitled, and the others at half-yearly intervals from the day on which the first instalment became due (S. D. A. 1853, s. 21); or

(*b*) By two moieties, whereof the first is to be paid by four equal yearly instalments, commencing one year after the successor became beneficially entitled, and the second moiety on the day for payment of the last instalment of the first moiety, or, if not so paid, shall be payable by four yearly instalments, with interest, from the last-mentioned date (Customs & Inland Revenue Act, 1888, s. 22 (1)); or

(*c*) In full, under discount (S. D. A. 1853, s. 40, and Customs & Inland Revenue Act, 1888, s. 22 (2)).

If the successor dies within four and a half years, the half-yearly instalments not due cease to be payable (*ibid.*, s. 22 (3) (*b*)).

It will be observed that by method (*a*) the duty should be completely paid at the end of four and a half years, and that by method (*b*) it should be paid by the end of four years. If in the latter case payment is not complete, the successor may continue to pay by instalments, but he must then pay interest on the duty for the time being unpaid.

He may also, if he chooses, pay in full under discount. In such case discount is allowed for three years three months, less the time which has elapsed since the death giving rise to the claim. If he dies before all the instalments, if paid half-yearly, would have become payable, application may be

made for a re-calculation and a return of the instalments which have ceased to be payable (*ibid.*).

If any property in respect of which the Succession Duty is being paid by instalments, is sold, exchanged or mortgaged, and the charge for such duty is overreached, all instalments immediately become payable (L. P. A. 1925, s. 17 (3) and L. R. A. 1925, s. 73 (6)).

In the case of leasehold property, where the term is short, it is manifest that it would be unfair to the successor to base the account on the annual value, and in such cases the principal value should be shown, and the duty is then assessed on the value according to Table II of an annuity for the joint lives of the successor and an imaginary life at which the annual value is equivalent to the principal value of the property.

It follows, from the fact that duty is calculated on the annual value, that where at the time the successor becomes entitled in possession the property is not capable of producing any income and has no saleable value, no duty is payable (A.-G. *v.* Sefton, 11 H. L. C. 257). If, however, the property has a saleable value, it is considered that duty is payable on the basis of an income at the current rate of interest on such value (*ibid.*).

Where the succession includes timber, trees, or wood, the Succession Duty in respect thereof is payable on the capital sums from time to time received by the successor on sale, after deducting all necessary outgoings as described in the case of a successor who was competent to dispose (F. A. 1910, s. 61 (5), as amended by F. A. 1912, s. 9, and *see* above, page 335). It would seem that in strictness duty is payable in the same way where a part of the receipts from timber sales is retained by the trustees of the settled property and invested as capital moneys, as there is no provision in the Finance Acts corresponding to that in s. 23

of the S. D. A. 1853, by which duty was charged on the *interest* of the successor. In practice, however, duty is taken by way of life interest on the basis of an annual value of £4¾ per cent. (or the average rate of interest for the time being of trust securities) on the capitalized portion of the proceeds of sale.

In the case of an advowson or Church patronage, no Succession Duty is payable unless and until a sale takes place, in which case Succession Duty is payable on the proceeds of sale (S. D. A. 1853, s. 24). As it has been decided that such proceeds are not liable to Estate Duty (A.-G. *v.* Peek, [1913] 2 K. B. 487), the higherr ates of Succession Duty would be payable (*see* page 323). If, however, the advowson were settled and the life tenant died after the sale, Estate Duty would be payable in connection with *his* death; This liability would arise quite apart from the F. A. 1914, s. 14, and would not therefore be affected by the fact that the life tenant was the widow of the settlor.

As regards manors, opened mines, or other real property where the income fluctuates, it is provided that duty may be paid either on the basis of the average actual income after deducting necessary outgoings, during such a number of years preceding the time when the first paymentof duty is due as may be agreed upon between the successor and the Commissioners, or if no such period can be agreed upon, the principal value of the property is to be ascertained and the annual value is to be taken at £3 per cent. interest thereon (S. D. A. 1853, s. 26).

Corrections.

As has been explained, where a successor does not obtain the whole of his succession at the time of the duty becoming payable, he is charged only on the value of the property

from time to time obtained (*ibid.*, s. 37). And where it is proved that duty has been paid by mistake or too much duty has been paid, the Commissioners are required on application being made to refund the duty so paid in error (*ibid.*).

So also where a successor on taking a succession has to give up or is deprived of other property, he is entitled to have an allowance made in his account in respect of the property given up, so long as the property given up was acquired by him by a title not conferring a succession on him, and which passes from the successor to some other person (*ibid.*, s. 38, as amended by Customs & Inland Revenue Act, 1889, s. 10 (1)).

Where the succession is such that the rate cannot be fairly ascertained, as above, or there are other complications, the Commissioners are authorised to compound the duty on such terms as they think fit and they may, in special cases, enlarge the time for payment of any duty (S. D. A. 1853, s. 39). (*See also* pages 147 and 255.) The general powers of compounding and remitting duties and interest there described also apply to Succession Duty

Commutations.

The Commissioners may also, on the application of the parties accountable, commute Succession Duty presumptively payable (*ibid.*, s. 41, and Customs & Inland Revenue Act, 1880, s. 11). The power to commute is exercised where there has been a sale or other dealing with the property which renders it desirable to get rid of the charge of Succession Duty. Thus, if *A* is life tenant of a fund, and *B* entitled on his death, and they agree to divide up the fund in *A's* lifetime, the trustees of the settlement would not be safe in paying over the money until the duty

presumptively payable on *A's* death had been provided for. Application should, therefore, in such case be made to the Commissioners to commute the duty. The duty is assessed on the then capital value of the fund and discounted at £4 per cent. for the expectancy of *A's* life. In such case, where *A* receives as his share a sum approximately equal to the value of his life interest, no Estate Duty would be payable on his death. If, however, he surrendered his life interest to *B* and died within three years, Estate Duty would be payable, and the trustees should retain a portion of the fund to meet such a contingency. If the life tenant survives the three years, and the Succession Duty has been commuted, the sum retained can safely be paid over.

It should be noted that where during the lifetime of the life tenant the property is sold under a trust or power of sale under the instrument creating the succession, the charge of Succession Duty presumptively payable on the life tenant's death shifts from the property to the proceeds of sale and in such cases, therefore, as it is not an incumbrance on the property in the hands of the purchaser, it is not necessary to commute. The same result follows where settled land is sold under the provisions of the S. L. A. 1925, or is compulsorily acquired by a public authority or company.

In all cases of commutation, where there has been no payment of Estate Duty, the higher rates of Succession Duty are payable, as the exemption in F. A. 1894, s. 1, would not apply. Where the property is taken out of settlement before the 30th April, 1909, or the first succession under the disposition arose before that date, the rates mentioned at the foot of Table III, on page 324, would apply. Where the transaction takes place after that date and the property has not borne Estate Duty, under the disposition, in connection with a previous death, the rates mentioned in

Table II on page 323, viz., £1. 10s. per cent., £6. 10s. per cent., and £11. 10s. per cent., would apply.

Where the case is one for commutation of Estate Duty, it must be borne in mind that the £1 per cent. rate of Succession Duty is not also payable (F. A. 1894, s. 1), unless the whole property passing on the presumptive death exceeds or will probably exceed £15,000, and then only where the individual succession is over £1,000 (or, in the case of a widow or infant child, is over £2,000) (F. A. 1910, s. 58 (2)). And where on the surrender of a life interest Succession Duty has been commuted, and the life tenant dies within three years so that Estate Duty becomes payable, the Succession Duty already paid at £1. 10s. per cent. is returnable, assuming the above limits of value for the £1 and £1. 10s. per cent. rates are not reached.

Where, however, in a case for commutation of Estate Duty there is a presumptive claim for the £1 per cent. Legacy or Succession Duty, that duty should also be commuted if it is reasonably probable that the £15,000 limit may be exceeded. If there is a doubt, a sufficient sum should be set aside by the accountable parties to answer any claim for the future £1 per cent. duty, but if it is essential to dispose of the charge for duty, it should be commuted and will not in any event be returnable.

Successions Sold or Transmitted.

It is now necessary to give some account of what takes place when a succession is sold or transmitted before the successor becomes entitled in possession. In this connection it should be borne in mind that when once a disposition is created by which property may devolve on death the claim for Succession Duty expectant on that death cannot be got rid of. In the case of a deed the claim comes into being on the execution of the deed, and in the case of a will

on the death of the testator. But before the succession vests in possession and the duty becomes payable (1) *it may be transmitted by death, thus creating another succession, or* (2) *it may be sold or alienated in some other way.*

First, as to personal estate in the case of a succession transmitted by death, it is provided that only one duty is to be paid and is to be due from the successor who first becomes entitled in possession, but such duty is to be at the highest rate which, if every successor had been subject to duty, would have been payable by any one of them (S. D. A. 1853, s. 14).

Thus if *B*, who is entitled under a deed to £4,000 on the death of *A*, settles it on himself for life and then on *C* and dies before *A*, there are two successions—one on the death of *A* under the original disposition and one under *B's* disposition; but only one Succession Duty is chargeable and that under the last disposition, at whichever rate is higher.

In extension of this rule must be noticed the provision that no person charged with Legacy Duty in respect of any property shall be charged with Succession Duty in respect of the same acquisition of the same property (*ibid.*, s. 18). So that if in the above instance *B* had bequeathed the £4,000 by will so that Legacy Duty was payable, the claim for Legacy Duty would prevail over the claim for Succession Duty under the original disposition, and therefore only Legacy Duty would be payable (A.-G. *v.* Littledale, L. R. 5 H. L. 290).

Secondly, the succession in personal estate may be transmitted before it falls into possession in such a way that a new succession is not created—as by alienation or sale. In such cases it is provided that Succession Duty is to be paid at the same rate and time as the same would have been payable if no such alienation had been made

(S. D. A. 1853, s. 15). Thus if in the foregoing instance *B* had sold his reversion to *C*, then, on *A's* death, *C* would pay duty at the same rate and at the same time as *B* would have done if he had not sold.

In the case of real estate and leaseholds the incidence of duty is somewhat different.

If the transmission is under a title creating a new succession, the original succession is displaced and one Succession Duty only is payable on the succession derived from the original successor (A.-G. *v.* Cecil, L. R. 5 Ex. 263). Thus, if *B*, who is entitled to a freehold house on the death of *A*, dies before it falls into possession and devises it by his will to *C*, the succession of *C* under the will of *B* displaces the original succession of *B*, and Succession Duty is only payable under *B's* will and not under the original disposition. Moreover, if for any reason *B's* estate is exempt from Succession Duty, as, for instance, if it is under £1,000, or if the house passes to his widow or children and does not come within the taxable limits of the £1 per cent. Succession Duty, the property escapes Succession Duty altogether.

Again, the succession to real estate and leaseholds may be transmitted by alienation not conferring a new succession. In such cases as noted above in that of personal property, the duty is to be paid at the same rate and time as it would have been payable if no alienation had been made. Thus, in the above instance, if *B* had sold his reversion to *C*, then, on *A's* death, *C* pays Succession Duty at the same rate and time as *B* would have paid it (Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233, and Wolverton *v.* A.-G., [1898] A. C. 535). But if the succession is chargeable by way of life interest the age to be taken is that of the alienee, and not that of the original successor.

But suppose the purchaser dies having created a new succession by his will. In such a case it may be urged that two Succession Duties are payable—one under the original title at the rate appropriate to the original successor, and one under the purchaser's will as on a succession by his devisee from him. Such cumulative duties are not, however, claimed. But if an expectant successor mortgaged his interest and died before it fell into possession, Succession Duty would in strictness remain payable on the mortgage debt under the original disposition, as to that extent the original succession would not be regarded as displaced (Hamilton's Estate (1905), 39 Ir. L. T. 272).

The purchaser, instead of buying the reversionary interest, may acquire the property outright. If he then dies in the lifetime of the life tenant, having devised the property to *D*, two Succession Duties would be payable —one on the death of the purchaser under his will, and again on the death of the life tenant under the original disposition (Northumberland *v.* A.-G., [1905] A. C. 406).

The distinction between an alienation and a new succession has recently been considered in the case of A.-G. *v.* Assheton-Smith, [1924] 2 K. B. 25, where the tenant in tail in remainder under the will of a stranger in blood disentailed and under powers conferred by the disentailing deed charged the property with an annuity payable on the death of the life tenant (his father) in favour of his stepmother. It was held, following the case of A.-G. *v.* Cecil, *supra*, that on the death of the life tenant in 1914 the annuitant was not liable to Succession Duty at £10 per cent. as alienee of part of the original succession derived from the testator as predecessor, but that the correct rate was £1 per cent. as on a succession derived from her stepson, the original tenant in tail. It is difficult to reconcile this decision with the wording of the

second part of s. 15, and the other decisions thereon, and it is considered that it is only applicable to cases where a tenant in tail in remainder disentails and under powers conferred by the disentailing deed charges the property with annuities or capital sums payable on the death of the life tenant in favour of volunteers. It would not apply where a tenant in tail in remainder transfers the whole or part of his expectant succession or creates a life interest therein.

As already explained, where a successor is competent to dispose, duty is chargeable on the principal value of the property. If, however, the effect of alienation or transmission is that the successor who becomes entitled in possession takes for life only, then the duty is charged on on the value of his life interest. Thus, in the example on page 349, if the purchaser had by will devised the property to *D* for life, and then to *E* in fee, Succession Duty would have been paid under the purchaser's will on the life interest of *D* according to his relationship to the purchaser. On *A's* death, duty would be again payable on *D's* life interest at the rate depending on the relationship of the original successor to the original predecessor. Further, on *D's* death after *A*, Succession Duty would become payable by *E* on the principal value according to his relationship to the purchaser (Northumberland *v.* A.-G., [1905] A. C. 406).

Reversion Sold before the Finance Act, 1894.

In this connection it should be pointed out that where a reversion has been sold before the F. A. 1894 came into operation, it is provided that it is only to be liable to the same duties as would have been payable if that Act had not been passed (F. A. 1894, s. 21 (3)). This provision relieves a purchaser from finding his purchase burdened with greater liabilities for Death Duties by subsequent legislation than he could have taken into

account. The property in such a case escapes Estate Duty altogether. Further, unless the successor is a charity (S. D. A. 1853, s. 16) or corporation (*ibid.*, s. 27, and Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233), real estate is not liable to Succession Duty on the capital value, but such duty is charged in the same way as it would have been before the Act, viz., by way of life interest. The only distinction is that the life is that of the purchaser and not that of the original successor. Therefore, if *B*, an expectant successor in fee under the will of *A*, has sold to *C* before the F. A. 1894, *C* does not pay duty on the principal value of the property, but on the value of his (*C's*) life interest at the rate depending on the relationship (if any) subsisting between *B* and *A*. The purchaser in fact pays duty on his own life interest, but at his vendor's rate.

Similarly, if an expectant succession is sold before the F. A. 1910 came into operation and the life tenant dies after that date, Succession Duty is payable at the rates in force before the Act (*see* s. 64 and Table III on page 324).

A mortgagee of a reversionary interest is not, as such, chargeable with Succession Duty, but if he forecloses he becomes liable. If he sells under his powers of sale, the purchaser becomes liable for the duty, as it is a charge on the property in whosesoever hands it may be.

Where a life tenant and a reversioner combine to mortgage settled real estate, Estate Duty would only be payable on the death of the life tenant on the value of the property, less the mortgage debt (Cowley *v.* Commissioners of Inland Revenue, [1899] A. C. 198); but no allowance could be claimed in the succession account for the mortgage debt, as so far as it affects the fee simple it must be regarded as created by the remainderman (*re* Peyton, 7 H. & N.

265, and *re* Hamilton's Estate (1905), 39 Ir. L. T. 272). If, therefore, the latter was a lineal descendant of the settlor and the property did not come within the range of the £1 per cent. Succession Duty, the result would be that Estate Duty would be payable on the property, less the mortgage debt and Succession Duty at £1. 10s. per cent. on so much of the property as escapes Estate Duty, *i.e.*, the amount of the mortgage money.

Acceleration.

Akin to the sales of reversionary interests is the acceleration of the interest of the successor by the surrender or extinction of any prior interests. In such cases it is provided that the duty is to be paid at the same time and in the same manner as it would have been paid if no such acceleration had taken place (S. D. A. 1853, s. 15). Thus, suppose *B* is entitled to £4,000 on the death of *A*, under a settlement, and *A* during his lifetime releases his life interest so that *B* becomes entitled in possession, Succession Duty does not become at once payable, but can be deferred until the death of *A*.

Again, suppose, under a marriage settlement, property was settled by *A* on *B* for life, and then on her children, and during *B's* life a sum was advanced to one of her children for his advancement in life, *B* giving up her life interest, Succession Duty would be payable, but could not be enforced until the death of *B*, and if paid by way of commutation at the time of the advance an allowance in respect of *B's* life interest would be made (*ex parte* Sitwell, 21 Q. B. D. 466). The higher rates of Succession Duty are payable in respect of the advances (made out of property which has not borne Estate Duty in connection with an earlier death), as, assuming they were made more than three years before the death of the life tenant, they would

escape Estate Duty (*see* Table II on page 323 and note to Table III on page 324).

The proper course in cases of this kind, where property is taken out of settlement, is to apply to commute the duty payable, so that no question can arise on the life tenant's death. (*See* A.-G. *v.* Chambres, [1921] 1 K. B. 173.) Assuming the life tenant is in ordinarily good health, duty is assessed on the property taken out of settlement and discounted for the life of the life tenant.

The exercise of an overriding power of appointment under a settlement is not an acceleration (A.-G. *v.* Selborne, [1902] 1 K. B. 388).

The value for Succession Duty in acceleration cases (where there has been no commutation) is the value on which duty would have been payable if no acceleration had taken place (*i.e.*, the value at the death of the life tenant), and therefore where investments were transferred to the beneficiary they should be accounted for at their value at the death of the life tenant, but if investments were sold out by the trustees to provide a specific sum for the expectant successor, Succession Duty would be payable on such sum.

A succession to real property arises within the meaning of the F. A. 1894, s. 18, on the death on which the successor becomes beneficially entitled in possession, and not at the date when the disposition, which brings it into being, takes effect (A.-G. *v.* Anderton, [1921] 1 K. B. 159, and F. A. 1225, s. 24. If therefore such a succession is accelerated and the life tenant dies after the F. A. 1894, Succession Duty is payable on the basis of the principal value of the real property even though the succession was conferred by the will of a testator who died before the F. A. 1894. It would, however, be otherwise if the successor before becoming entitled in possession had cut down his absolute interest to

a life interest. In that case such duty would be charged only on the value of such interest.

Enlargement.

Somewhat similar to acceleration is the question of enlargement, as where real estate is settled on *B* for life. and on her death on her husband *C* for life, and in default of issue of *B* and *C*, on *B* absolutely. On the death of *C* in the lifetime of *B*, and in default of issue, *B's* interest becomes enlarged, and she is liable to Succession Duty on the capital value of the property, as on a substantive succession, subject to an allowance being made in respect of the life interest which she had before the death of *C* (S. D. A. 1853, s. 20, and *see* A.-G. *v.* Robertson, [1893] 1 Q. B. 293).

Successor also the Predecessor.

It is convenient to mention here the case of a successor taking a succession under his own disposition. The rule is that a successor shall not be chargeable with duty upon a succession taken under a disposition made by himself (S. D. A. 1853, s. 12). For instance : *A*, being entitled in possession to property, settles it on *B* for life and then on himself absolutely. On *B's* death no Succession Duty is payable by *A*, as he succeeds under a disposition made by himself.

There are two exceptions to the rule : (*a*) where at the time of the disposition the property is in reversion and the life tenant dies during the continuance of the disposition ; and (*b*) on the extinction or determination by a death of a charge or limited interest created by the successor where at the date of the creation of such charge or limited interest he was entitled to the property subject thereto in reversion (*ibid.*). In these excepted cases it is provided

that duty is to be paid at the same rate as it would have been payable if no disposition had been made by the original successor. Thus *A* settles real estate on his nephew *B* for life and then on *B's* son *C* in tail. *B* and *C* disentail and re-settle the property on *B* for life, thus restoring his former interest, then on *C* for life and on *C's* death on his eldest son in tail. *C* in such cases has cut down his interest to an estate for his life only and on the death of *B* he thus becomes entitled under his own disposition. He is, however, liable to duty as on a succession derived from his great uncle *A* as predecessor (A.-G. *v.* Sibthorpe, 3 H. & N. 424 ; Braybrooke *v.* A.-G., 9 H. L. C. 150 ; A.-G. *v.* Floyer, 9 H. L. C. 477 ; A.-G. *v.* Smythe, 9 H. L. C. 498).

Subject to the decision in A.-G. *v.* Assheton-Smith, *supra*, page 349, dealings with real estate settled in strict settlement and subsequently disentailed are regarded as dispositions by the original tenant in tail. On the death of the original tenant for life, such a disposition is regarded as an alienation by the original tenant in tail if then living, but if he is then dead it may create a new succession derived from him as predecessor (A.-G. *v.* Cecil, L. R. 5 Ex. 263).

From what has been said above, it follows that an expectant successor cannot diminish the Succession Duty payable on the death of the life tenant by mortgaging or otherwise charging his reversion. So that if *B* is entitled to property on the death of *A*, and during *A's* lifetime he mortgages the property he cannot on the death of *A* deduct the mortgage in his succession account (S. D. A. 1853, s. 34 ; *re* Peyton, 7 H. & N. 265 ; and *see in re* Hamilton's Estate (1905), 39 Ir. L. T. 272).

And if in *A's* lifetime he created a rent charge in favour of *C*, he could not make any deduction in respect thereof when

paying Succession Duty on *A's* death unless it arose in such a way as to create a new succession between *B* and *C* (S. D. A. 1853, s. 34 ; and *re* Peyton, *supra* ; but *see also* A.-G. *v.* Assheton-Smith, *supra*, page 349).

The rate of Succession Duty is determined by the circumstances of the succession at the time of its creation and not by subsequent events (other than changes in the law) which take place before it falls into possession. So where a woman who is entitled to a succession under a deed derived from her husband is divorced, she does not by the fact of divorce become chargeable with duty as a stranger in blood (Bullmore *v.* Wynter, 22 Ch. D. 619).

Natural children are chargeable with Succession Duty as strangers in blood, but if the law of their father's domicile permits them to be subsequently legitimated and steps have been taken to effect this result they would be regarded as lineal issue for Succession Duty purposes (Grey *v.* Stamford, [1892] 3 Ch. 88) except, perhaps, in the case of a succession, before the A. E. A. 1925, to English real estate under an intestacy (Doe, deceased ; Birtwhistle *v.* Vardill, 7 Cl. & F. 895).

As regards children adopted in accordance with the Adoption of Children Act, 1926, *see* page 236. The adoption must, it is presumed, have been carried out before the succession is conferred.

Where a successor has married a person in a nearer degree of relationship to the predecessor, he or she is only liable to duty at the rate at which his or her wife or husband would have been chargeable (S. D. A. 1853, s. 11). The marriage must have taken place before the succession took effect although the benefit will not be lost by the death of the spouse, whether that event takes place before or after the date of the succession. On the other hand, a successor who has once become chargeable with duty at a certain rate

is not entitled to the benefit of this provision by marrying a relation of the predecessor. And where the predecessor has married a relation of the successor, the rate of Succession Duty is unaffected.

Succession Duty is to be paid at the time the successor or any persons in his right (*i.e.*, purchasers or derivative owners) or on his behalf (*i.e.*, trustees, guardians, committees, etc.) become entitled in possession to the succession or to the receipt of the income and profits thereof (S. D. A. 1853, s. 20). But as already explained, if there is any prior charge, estate, or interest not created by the successor himself, the duty is to be paid on the determination of such charge, estate, or interest (*i.e.*, if not previously paid or commuted). The additional duty so payable is payable by the same instalments, and, where duty is payable by way of life interest, the age of the successor is taken as at the date of determination of the charge, estate, or interest.

CHAPTER XIV.

PERSONS ACCOUNTABLE FOR SUCCESSION DUTY.

THE successor himself is personally liable for the duty (S. D. A. 1853, s. 42). So also are the following persons to the extent of the property or funds actually received or disposed of by them, viz., any trustee, guardian, committee, tutor, curator, or husband in whom respectively the property or the management thereof is vested, and every person in whom it is vested by alienation or other derivative title at the time the succession becomes an interest in possession (*ibid.*, s. 44). Such persons are authorized to compound or pay in advance any such duty, and to retain out of the property the amount of the duty, or to raise the amount and the expenses on the security of the property (*ibid.*). All such persons become debtors to the Crown for the unpaid duty (*ibid.*).

Agents, such as solicitors, estate agents or bailiffs, who merely collect the rents or manage the property on behalf of the owner are not accountable nor would a bare trustee be accountable, *i.e.*, a trustee who has no power of management but whose only duty is to convey the legal estate.

Land.

As regards claims for Succession Duty in respect of land in England or Wales, arising on deaths on or after 1st January, 1926, reference should be made to the more detailed observations dealing with Estate Duty, page 149, *et seq.*, as the term "death duties," used in the L. P. A. 1925

and the L. R. A. 1925, includes not only Estate Duty, but also Legacy Duty and Succession Duty, and any other duty leviable on death.

Briefly stated, the personal representative is now made accountable for the Succession Duty on land (including settled land) devolving upon him or vesting in him (L. P. A. 1925, s. 16 (1), and L. R. A. 1925, s. 73 (3)), and in every other case the estate owner or proprietor of a registered estate (except a purchaser who has bought free from the charge) is accountable. The liability of the latter persons covers any interest in the land which they can over-reach on a sale under the S. L. A. 1925, or under a trust for sale, or by a registered disposition (L. P. A. 1925, s. 16 (2), and L. R. A. 1925, s. 73 (4)).

Thus on the death of *A* in 1926 settled land passes to *B* for life, subject to a jointure of £500 per annum to *C* for life, and portions amounting to £10,000 for younger children. If the land devolves on *A's* legal personal representatives they are accountable for the Succession Duty payable on his death in respect of the jointure, portions and life interest. It may be noted that their liability only extends to the duty payable on the death of *A*, and they are not, as such representatives, accountable for any Succession Duty payable on subsequent devolutions of the settled property. On payment of the duty they are entitled to recoupment by the beneficiaries according to their respective interests (L. P. A. 1925, s. 16 (5), and L. R. A. 1925, s. 73 (11)).

The persons so made accountable are given all existing powers of raising the duty and costs (L. P. A. 1925, s. 16 (3), and L. R. A. 1925, s. 73 (10)). *See* S. D. A. 1853, s. 44, as to such powers, and page 358 *supra*.

The liability of a personal representative or other person in a fiduciary capacity is not, however, to exceed the assets (including land) vested in him or in the trustees of the

settlement, which may or should be available for payment of the duty (L. P. A. 1925, s. 16 (6), and L. R. A. 1925, s. 73 (14)).

It is expressly provided that nothing in these Acts is to alter the duty in respect of land or impose any new duty or affect the remedies of the Commissioners, except against a purchaser for money or money's worth, or impose a charge on leasehold land or render a mortgagee liable in respect of a charge of duty subsequent to his mortgage (L. P. A. 1925, s. 16 (4), and (6), and L. R. A. 1925, s. 74 (11) and (14)). The reference to leasehold land has no effect so far as Succession Duty is concerned, as there already existed a charge of Succession Duty on that property.

Although the personal representative, estate owner or registered proprietor is thus made accountable, the liability of the successor or beneficiary as such is not affected (L. P. A. 1925, s. 16 (5), and L. R. A. 1925, s. 73 (11)). If the duty has not been paid by the former, the successor remains liable to account to the Commissioners, and his interest in the property is charged with the duty. If the duty has been paid by the personal representative, estate owner or registered proprietor, the successor is bound to repay it to such person, and where several persons are beneficially interested, repayment should be made according to their respective interests. The only persons against whom the remedies of the Commissioners are affected are purchasers for money or money's worth (L. P. A. 1925, s. 16 (4), and L. R. A. 1925, s. 73 (11)).

The successor, being personally accountable, cannot get rid of his liability by selling the property after he becomes entitled in possession, and if he dies, the unpaid duty is a debt from his estate for which his executors are personally accountable. A purchaser who buys after the property has

fallen into possession is not personally accountable, but the duty is made a first charge on the successor's interest in the property (S. D. A. 1853, s. 42, and F. A. 1894, s. 18), and in the case of land where the claim for duty arose after 1925 and had been registered as a land charge the duty would be an effective charge on the land.

Where a reversion in settled property is purchased, the purchaser is liable for the duty (S. D. A. 1853, ss. 15 and 44, and Solicitor-General *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233), and has no claim to be reimbursed by the successor, *i.e.*, in the absence of express agreement (Cooper *v.* Trewby, 28 Beav. 194). Where, however, a life tenant and remainderman joined to sell the property in possession, the purchaser was entitled to have the property conveyed free from any charge of duty (Kidd and Gibbons' Contract, [1893] 1 Ch. 695, per Kekewich, J.), and in such cases the vendors might have been required to commute the duty payable on the death of the life tenant. Now, however, the sale of settled land would have to be made under the powers of the S. L. A. 1925, and the liability for future duties would in such case shift from the land to the proceeds of sale and any duty, arising after 1925, and unpaid at the date of sale would not affect the land in the hands of a purchaser for money or money's worth unless registered as a land charge.

In the case of transmitted interests in personal property, the duty is due from the successor who first becomes entitled in possession (S. D. A. 1853, s. 14). This applies where the interest of the successor before he has become entitled in possession has passed by reason of death to another successor. Only one Succession Duty is to be paid, and is due, as stated, from the actual beneficial successor.

In the case of an annuity, rent charge or legacy charged upon or payable out of real estate or out of any moneys to arise from the sale of any real estate, the Succession Duty

thereon is to be accounted for by the trustee to whom the real estate is devised or if there is no trustee, by the devisee or by the person empowered or required to pay the annuity or legacy (A.-G. *v.* Jackson (1831), 2 Cr. & J. 101, and Stow *v.* Davenport (1833), 5 B. & Ad. 359, and *see* L. D. A. 1805, s. 5). The duty is to be retained by such person out of the annuity or legacy unless given free of duty, in which case the duty is payable out of the real estate itself (Noel *v.* Henley (1819), 7 Pri. 241, and Floyer *v.* Bankes (1863), 3 De. G. J. & Sm. 306). Where the land charged devolves upon or vests in a personal representative, he will now be accountable in respect of claims for duty arising after 1925 (L. P. A. 1925, s. 16 (1) and L. R. A. 1925, s. 73 (3)) and in other cases the estate owner or registered proprietor is accountable (*ibid.*, s. 16 (2) and *ibid.*, s. 73 (4)).

Where a person in his lifetime has settled a sum of money which is to be paid out of his estate on his death, on the trusts of a settlement, his executors are not liable for any Succession Duty payable on his death in respect of such sum even though the covenant was to pay the amount " free from all deductions whatsoever " (*re* Higgins; Day *v.* Turnell (1885), 31 Ch. D. 142).

When a Charge.

Besides the personal liability of the successor, it is provided that, in the case of real estate, the duty is to be a first charge on the interest of the successor and of all persons claiming in his right (S. D. A. 1853, s. 42).

Where the successor is competent to dispose and succeeds to real estate on a death after the F. A. 1894, the Succession Duty is a charge on the property itself (F. A. 1894, s. 18) As more fully dealt with in connection with Estate Duty (*see* page 137), this charge, where it affects unregistered land

in England or Wales, and attached after 1925, may be registered as a land charge (L. C. A. 1925, s. 10 (1), Class D (1)), and unless so registered, a purchaser of a legal estate takes free therefrom (L. P. A. 1925, s. 17 (1)). It is only as against a purchaser for money or money's worth that registration is effective, for a conveyance to any other person takes effect subject to the charge of duty, even though the charge has not been registered (*ibid.*, s. 17 (4)).

It will be observed that sub-section 1 does not give protection from a charge for duties which has attached before the commencement of the Act, and in strictness it may be that, so far as Succession Duty on unregistered settled land is concerned, a charge for that duty had attached under every disposition in operation at the time the Act commenced in respect of any subsequent death of a person entitled thereunder in possession (Northumberland *v.* A.-G., [1905] A. C. 406 (judgment of Lord Chancellor), and Ld. Adv. *v.* Macalister, [1924] A. C. 586). If that is so, sub-section 1 would not protect a purchaser from a charge of Succession Duty under such dispositions.

Where the charge is not registered, and is therefore overreached by a conveyance on sale, the person conveying and the proceeds of sale remain liable for, and stand charged with, the payment of the duty (*ibid.*, s. 17 (2)).

It may be added that where Succession Duty is payable by instalments, all unpaid instalments immediately become payable on a sale, exchange or mortgage which operates to overreach the charge of Succession Duty. If this results in an overpayment of duty, the excess is to be returned by the Commissioners. An example of the circumstances in which this might occur is given on page 154, *supra* (*ibid.*, s. 17 (3)).

As regards registered land, provision is made for an entry of notice of the charge on the register, and before a disposition

which can override it can be registered, notice is to be given to the Commissioners (L. R. A. 1925, s. 73 (7) and (8)).

But although the charge may be protected by notice, a purchaser for money or money's worth takes free therefrom (*ibid.*, s. 73 (1)).

A disposition to any other person, however, takes effect subject to the charge, whether notice has been entered or not (*ibid.*, s. 73 (2)).

On a sale by a personal representative or other proprietor, which overrides the charge as noted above, the persons who convey and the proceeds of sale remain liable for and stand charged with the Succession Duty (*ibid.*, s. 73 (5)).

As in the case of unregistered land, there is a similar provision for payment of all instalments of Succession Duty and for reclaiming any excess duty (*ibid.*, s. 73 (6)).

These provisions as to registered land only apply to Succession Duty payable or leviable after the commencement of the L. R. A. 1925. Duty payable or leviable before that date is subject to the previously existing provisions of the Land Transfer Acts (*ibid.*, s. 73 (16)).

In the case of personal property Succession Duty is a first charge on the interest of the successor while the property remains in the ownership or under the control of the successor, or of any trustee for him, or of his guardian, or committee, or tutor, or curator, or husband of any wife who shall be the successor (S. D. A. 1853, s. 42).

The duty is to be a debt due to the Crown, which, in the case of real estate, has priority over all charges and interests created by the successor, but is not to affect any other real estate comprised in the succession. Where the property is subject to any power of sale, exchange, or partition, the duty is charged substitutively upon the successor's interest in the real estate acquired in substitution,

and in the meantime upon his interest also in all moneys arising from the exercise of such power, and all investments of such moneys (*ibid.*). Thus, where the successor is entitled for life only, the duty is a charge on the life interest, but not on the property itself, and therefore when he dies and the duty is unpaid the charge ceases, but the duty, except, of course, any instalments which had not become due, is recoverable from the estate of the successor.

Real property directed to be sold is chargeable with duty as a succession to personal property (unless the proceeds are directed to be invested in other real property) (*ibid.*, s. 29), and the duty does not therefore become a charge on the property in the hands of a purchaser. So that if *A* directs his real estate to be sold and the proceeds divided between *B* and *C*, on a sale taking place the purchaser is not concerned to enquire as to the Succession Duty. Similarly where registered land was sold by legal personal representatives before 1925 under the provisions of the Land Transfer Act, 1897 (*see* s. 13 and Rule 209 thereunder).

As already stated, where the successor becomes absolutely entitled to real property on a death after the F. A. 1894, and there is no direction to sell, the duty is a charge on the property itself, and if the successor dies, and the duty is not paid, it remains a charge in the hands of his devisee. It is also a debt due from his estate and the Crown has therefore the right to resort thereto, or to the property itself.

Unpaid Succession Duty, being a debt due to the Crown, is not affected by lapse of time, as the Statutes of Limitation do not bind the Crown, and therefore, however long the duty may have been unpaid, payment can still be enforced (*see* A.-G. (I.) *v.* Lordan (1906), 40 Ir. L. T. 98).

Limitation of Liability.

However, in the case of purchasers and mortgagees, the liability is limited, and it is provided that real estate or any interest therein shall not, as against a purchaser for value (including trustees of a marriage settlement, *re* Donelan's Estate, [1902] 1 I. R. 109), or a mortgagee, remain charged with duty after six years from notice to the Commissioners of Inland Revenue (to be given in the form prescribed by them, Customs and Inland Revenue Act, 1889, s. 15) of the fact that the successor, or any person in his right or on his behalf has become entitled in possession to his succession, or to the receipt of the income and profits thereof, or in the absence of any such notice after twelve years from the date when the duty became payable (*ibid.*, s. 12 (1)). The periods referred to in s. 12 (1) of six years from the date of the first payment of any instalment or part of the duty where the successor has not exercised the option given by s. 22 of the Customs and Inland Revenue Act, 1888, and of two years from the time for payment of the last instalment or part of the duty where he has exercised that option, only appear to apply where the duty is payable by way of life interest and would not therefore give protection where the duty is payable on the principal value under s. 18 of the F. A. 1894.

Thus, where notice has been given, liability for unpaid duty ceases after six years, but as the notice has to be given in a certain prescribed form (*ibid.*, s. 15), a purchaser or mortgagee will not usually be able to bring himself within the protection afforded by this provision. After twelve years, whether any notice has been given or payment made or not, liability ceases.

As regards claims for Succession Duty arising after 1925 in respect of land in England or Wales, however, a purchaser for money and money's worth is protected from

liability if the charge of duty is not registered (*see* page 363, *supra*, and L. P. A. 1925, s. 17 (1), and L. R. A. 1925, s. 73 (1)).

The liability of the successor and all other accountable persons is unaffected by the limitations above referred to, and at the expiration of the above periods the duty is to become charged substitutively upon any other estate or interest comprised in the succession and remaining vested in the successor or in any person in his right or on his behalf (other than a purchaser or mortgagee), and, in the case of a mortgage, on the equity of redemption (Customs and Inland Revenue Act, 1889, s. 12 (2)).

But though, as a general rule, a successor and the other persons liable (not including a purchaser and mortgagee) cannot get rid of liability, whatever period of time may have elapsed (A.-G. *v.* Lordan (1906), 40 Ir. L. T. 98), provision is made by which they may protect themselves in certain cases. Thus, any person may deposit an attested copy of any document which creates a liability to Succession Duty (other than a will which has been proved) with the Commissioners, and, after a receipt has been given for such copy, no person shall be liable for duty thereunder after six years from the date of notice in writing to the Commissioners in the form prescribed by them (Customs and Inland Revenue Act, 1889, s. 15) of the fact which gave rise to an immediate claim for such duty (*ibid.*, s. 13 (1)).

This provides for claims arising under deeds and other documents, but not under wills or intestacies ; and with regard to the latter, where a grant of representation has been taken out, it is provided that no person shall be liable for duty after six years from the date of settlement of the account in respect of which duty was payable where such account was full and complete and contained all material facts, and no trustee, executor, or administrator shall, after

such six years, be liable for duty if it is proved that the account was correct to the best of his knowledge, information, and belief (*ibid.*, s. 14). This provision, however, involves the delivery of an account, and does not afford relief until the account has been delivered and six years have elapsed since an assessment of duty was made (A.-G. *v.* Montefiore, 52nd Inland Revenue Report, page 85), or if the duty is payable by instalments, since the date for payment of the last instalment.

Where settled real property is sold under a power of sale the charge of duty expectantly payable on the life tenant's death shifts to the proceeds of sale in the hands of the trustees and a purchaser is not concerned to see that such duty is provided for. Thus *A* by deed settles real property and empowers the trustees to sell, and, in the meantime, the income is to be paid to *B* for life. On *B's* death, Succession Duty is payable and attaches to the property itself if not then sold, but if it had been sold in *B's* lifetime, the charge of duty would attach to the investments representing the proceeds of sale (S. D. A. 1853, s. 42). The power of sale referred to in s. 42 must, it is thought, have been conferred by the instrument creating the succession, and if, therefore, the property was subject to an annuity created by a prior instrument, a sale under the power would not cause the liability for duty on the cesser of the annuity to shift to the proceeds of sale. On this point the decision in Dugdale *v.* Meadows, L. R. 6 Ch. 501, does not appear to be correct. Now, however, the sale would be carried out under the S. L. A. 1925, and in that case a conveyance to a purchaser would overreach the annuity and the purchaser would not be concerned to enquire as to the Succession Duty payable on its cesser. Where a tenant for life sells under the powers conferred by the Settled Land Act the liability for

subsequent Succession Duty under the settlement also shifts to the proceeds of sale, and a purchaser is not concerned to see that such duty is provided for ; nor need he enquire as to any unpaid Succession Duty in respect of the life tenant's interest. The same result follows where land is compulsorily acquired by a corporation, county or district council, or railway company. Where a trust for sale arises on the death on which Succession Duty becomes payable and the property is sold under the trust, the claim for Succession Duty shifts from the property to the proceeds of sale and a purchaser is not therefore concerned to enquire as to the payment of this duty. Similarly where registered property was sold by the legal personal representatives of the deceased under the Land Transfer Act, 1897, as noted *supra*, page 365.

Where property not subject to a trust for sale is sold after the duty has become payable, the successor remains liable.

As regards sales of land in England or Wales, *see* page 363, *supra*, as to claims arising after 1925.

On the sale of a reversion, the purchaser is accountable for the duty (S. D. A. 1853, s. 44), and, as between himself and the vendor, has no right to be reimbursed by the vendor for the duty (Cooper *v.* Trewby, 28 Beav. 194).

The accountable persons are required under certain monetary penalties to give notice of any succession, and to deliver proper accounts showing the value of the property, the deductions claimed, the names of the successor and predecessor, and their relation to each other, and all other particulars necessary to enable the Commissioners to ascertain the duties due (S. D. A. 1853, s. 45, and Customs and Inland Revenue Act, 1889, s. 10 (3)). This is to be done in the case of personal property at the time of the first payment, delivery, retainer, satisfaction or other discharge of it,

or any part of it, to or for the successor or any person in his right, and in the case of real property when any duty in respect of it first becomes payable. If the Commissioners are dissatisfied with the account they may, subject to appeal, assess the duty on the footing of such account and upon such estimate as they may place thereon (*ibid.*).

The accountable parties are, if required by the Commissioners, to produce evidence in support of the account (S. D. A. 1853, s. 49). If, however, the assessment is objected to, the accountable parties have a right of appeal to the Court within twenty-one days of the assessment (*ibid.*, s. 50).

The Commissioners are required to give a stamped receipt for the duty and, on the application for any reasonable purpose (*e.g.*, on the occasion of a sale or transfer) of any person interested, a certificate of payment of the duty (*ibid.*, s. 51). Any such receipt or certificate which purports to be in discharge of the whole duty payable shall exonerate a *bonâ fide* purchaser for value without notice, notwithstanding any omission or mis-statement (*ibid.*, s. 52).

Under L. P. A., 1925, s. 16 (7), the Commissioners on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties in respect of land in England or Wales, for which he is accountable, shall if required by him, give a certificate to that effect. This certificate effectually discharges the land, and, if a land charge has been registered against it, is a sufficient authority to the registrar to cancel the charge. As regards registered land, the registrar is required to cancel notice of any claims for duty when he receives an intimation, which the Commissioners are required to give: (1) that all claims have been satisfied, (2) that no claims arise, or (3) that they are satisfied that the

duties will be paid or commuted (L. R. A. 1925, s. 73 (9)). As to the forms and practice, *see* page 215.

Where any proceedings are pending in Court for the administration of any property chargeable with Succession Duty, the Court itself is to provide out of the property in its possession or control for the payment of duty to the Commissioners (S. D. A. 1853, s. 53, and *see* notes in connection with Legacy Duty, page 271).

Separate assessments are to be made, if required, in respect of separate properties, and in such case the respective properties are chargeable only with the amount of duty separately assessed in respect thereof (*ibid.*, s. 43).

Where property is vested in trustees, they are the persons primarily liable to account for the duty, though the successors are accountable as well. If, therefore, the trustees distribute the property without providing for the Succession Duty, they remain personally liable, and in practice, before any distribution is made, the trustees should make application to the Commissioners for an assurance that there are no outstanding claims for duty. It should be borne in mind that the term " trustee " is, for Succession Duty purposes, made to include an executor or administrator and any person administering property affected by any express or implied trust (*ibid.*, s. 1).

It may be added that the trustee's costs of preparing and rendering the account of the succession of a tenant for life of settled real estate are payable by the tenant for life (Cowley *v.* Wellesley (1866), 35 Beav. 635, 642).

In the case of felled or cut timber which has been sold, the owners or trustees of the land are required to account for and pay the Succession Duty as and when the proceeds are received (F. A., 1910, s. 61 (5), last paragraph, and F. A., 1912, s. 9).

As noted with reference to Estate Duty (page 140), capital moneys held with settled land and personal estate held with land directed to be sold may, by direction of the tenant for life, statutory owner or trustees for sale, be applied in payment of the Succession Duty in respect of the land (L. P. A. 1925, s. 18 (1)). This may be done even though the duty relates to an interest which can be overreached by a conveyance to a purchaser, but in that case, if the duty would not otherwise be payable out of capital, it is to be repaid by the person liable to the trustees by the appropriate instalments and interest, and the interest of such person is to stand charged with such repayment (*ibid.*, s. 18 (2)). If any excess duty is repayable (*see* s. 17 (3)), the trustees shall be entitled to it (*ibid.*, s. 18 (2) (c)).

Similar provisions with regard to registered land are made by L. R. A. 1925, s. 73 (12 and 13).

Where settled property is being sold and the proceeds divided up, the trustees should require the duties that are presumptively payable to be commuted, or, if this is not done, they should retain a sufficient sum to provide for the future duties. So also in the case of advances made out of settled property during the lifetime of the tenant for life. The trustees by whom the advances are made or their personal representatives are accountable for the duty and the fact that the money was in Court and paid out under Order of Court does not protect them from liability (A.-G. *v.* Chambres, [1921] 1 K.B. 173).

The Commissioners may, if they think fit, on the application of the accountable parties, accept in satisfaction of the whole or part of the Succession Duty such part of the property chargeable as may be agreed upon (*see* page 116 and F. A. 1910, s. 56).

Where it is proved to the satisfaction of the Commissioners that any duty paid on account of any succession, not being due from the person paying it, was paid by mistake or in respect of property which the successor has been unable to recover, or from or of which he has been evicted or deprived by any superior title, or that for any other reason the duty ought to be refunded, the Commissioners are to refund it to the person entitled to it (S. D. A. 1853, s. 37, and *see* page 391).

CHAPTER XV.

EXEMPTIONS FROM SUCCESSION DUTY.

(1) Property to which Members of the Royal Family succeed.

(2) Where the whole succession derived from the same predecessor is under £100 in value.

(3) Property which is liable to Legacy Duty.

(4) Books, prints, pictures, and articles of artistic or other special interest to which a body corporate succeeds.

(5) Settled chattels, until they come into the hands of a person competent to dispose of them.

(6) Similar articles, certified by the Treasury to be of national interest, until sold.

(7) Money left to pay Succession Duty.

(8) Transactions made *bonâ fide* for full consideration in money or money's worth.

(9) Property taken by a successor under his own disposition.

(10) Advowsons and Church patronage, until sold.

(11) Timber, until sold.

(12) Life insurance policies as between the company and the beneficiaries.

(13) Bonds for payment of money after the death of a person, made *bonâ fide* for full consideration in money or money's worth.

(14) Free estate not exceeding £1,000.

(15) Free estate slightly exceeding £1,000 ; limitation of amount of Succession Duty.

(16) Successions of lineal issue, lineal ancestors, and the husband or wife of the predecessor where the taxable limits are not reached.

(17) Partial remission of Succession Duty in the case of members of H.M. combatant forces killed in the Great War or subsequently.

(18) Foreign property, as to which *see* observations on page 317.

(19) War Securities held by foreigners.

1. A succession to which any member of the British Royal Family becomes beneficially entitled is exempt from Succession Duty, and no account need be rendered (S. D. A. 1853, s. 18, incorporating Legacy Duty exemptions).

2. Where the property liable to Succession Duty, passing on any death, derived from the same predecessor is under £100, Succession Duty is not payable (S. D. A. 1853, s. 18).

Thus, if under the will of *A*, *B* becomes entitled to real estate worth £80, and there is no other property chargeable with Succession Duty, *B* escapes without payment of Succession Duty, even though he may take a share of *A's* personal estate which is worth considerably more than £100.

But if another successor, *C*, takes other real estate worth £70 under the same will, both successions would be liable to Succession Duty, as the whole successions are then over £100 in value.

If, however, the property devised to *B* were first given to *A's* widow for life, and no other succession derived from *A* arose on her death, then *B's* property would escape duty on that occasion, because the whole succession on the widow's death derived from *A* would be under £100 in value.

Again, if *B* derived his succession on the death of *A* from one predecessor, and *C*, on the same death, from another

predecessor, both would escape duty, and the result would be the same if *B* succeeded to both successions.

Formerly, where the taxable value of the succession was under £20 in value, Succession Duty was not payable (S. D. A. 1853, s. 18). Thus, if *A*, aged ninety, became entitled for life to property worth £7 per annum the taxable value according to the tables in the Act would be £19. 1s. 3d., and *A* would have escaped duty. This exemption, however, was abolished by the Customs and Inland Revenue Act, 1889, s. 10 (2).

3. Property which is liable to Legacy Duty is not also chargeable with Succession Duty in respect of the same acquisition of the same property (*see* page 347). Thus *A* by deed gives a fund to *B* for life, and then to *C*, and *C* dies before *B*, leaving his reversion to *D*. On the death of *B*, Legacy Duty is payable on the property under *C's* will and this duty displaces the Succession Duty which would otherwise have been payable under the deed (S. D. A. 1853, s. 18, and A.-G. *v.* Littledale, L. R. 5 H. L. 290). It might, however, happen that *C's* estate was exempted from Legacy Duty ; as, for instance, if it did not exceed £1,000 in value. In that case Succession Duty would be payable because Legacy Duty was not in fact payable under *C's* will (*see* exemptions Nos. 14 and 16).

4. Books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles to which a body corporate succeeds for preservation and not for sale are exempt from Succession Duty (S. D. A. 1853, s. 18, incorporating exemptions in Schedule to the Stamp Act, 1815, and *see* corresponding exemption from Legacy Duty, page 280).

5. Plate, furniture, or other things not yielding income and settled upon persons in succession are not liable to duty while enjoyed in kind by a person not having power to

dispose. Thus, where *A* by deed settles such property on himself for life and then on *B* for life and on his death on *C* absolutely, Succession Duty is not payable by *B* on the death of *A* (S. D. A. 1853, s. 32, incorporating L. D. A. 1796, s. 14). On *B's* death, however, Succession Duty would become payable (*see also* No. 6; and corresponding exemption from Legacy Duty, page 279).

6. Pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income, which appear to the Treasury to be of national, scientific, historic or artistic interest are not chargeable with Succession Duty while enjoyed in kind, whether settled or not (F. A. 1910, ss. 63 and 96 (1), extending F. A. 1896, s. 20, and amending L. D. A. 1796, s. 14, which is incorporated by S. D. A. 1853, s. 32). It should be noted, first, that the exemption applies whether the chattels are settled or are given to a person who can dispose of them as he thinks fit; and, secondly, that the Treasury are to decide whether the chattels in question are entitled to the benefit of the exemption. Application should now be made to the Estate Duty Office, with full particulars of the chattels, stating where they are located and when they may be seen, and giving a short account of the circumstances which are considered to entitle them to the exemption. Should they at any time be sold, Succession Duty becomes at once payable and the payment is referred back to the last death on which the chattels passed, but interest on the duty would only be chargeable from the date of sale. The person for whose benefit the sale is made is accountable for the duty (*see* corresponding exemptions from Estate Duty and Legacy Duty, pages 172 and 280). This provision has been modified by F. A. 1921, s. 44, by which an absolute exemption from duty is given if the sale is to the excepted bodies enumerated on page 79.

7. Money which is left to pay Succession Duty is not itself liable to Succession Duty, and, therefore, where a devise is directed to be free of Succession Duty or "free of any incumbrances" (*re* Nesfield; Barber *v.* Cooper, [1914] W. N. 161), no Succession Duty is payable on the money applied in payment of Succession Duty on the devise (S. D. A. 1853, s. 18). Such sums are, however, liable to Legacy Duty (*see* pages 229 and 281).

8. Transactions which are in the nature of *bonâ fide* sales for full consideration in money or money's worth are exempted from Succession Duty (*see* pages 305 and 306). To obtain complete exemption there must not be any element of bounty in the transaction, and so a gift *inter vivos* of £500 to a charity on terms that an annuity of £25 should be paid to the donor for life and on his death to his wife for life, would not be regarded as a transaction for full monetary consideration, and on the wife's death Succession Duty would be payable by the charity on the cesser of her annuity (A.-G. *v.* Johnson, [1903] 1. K B. 617).

Where under a settlement provision is made by way of an annual sum or otherwise for remuneration of the trustees, Succession Duty is not payable on the death of one trustee in respect of the benefit which accrues to a new trustee appointed in his place (A.-G. *v.* Eyres, [1909] 1 K. B. 723, and *see* corresponding exemption from Estate Duty, page 164).

9. Where a successor becomes entitled on a death under a disposition made by himself, Succession Duty is not payable provided the property was in possession at the time the disposition was made. In similar conditions Succession Duty is not chargeable on the termination of any charge, estate or interest created by the successor (S. D. A. 1853, s. 12, and *see* page 354).

10. Where a succession comprises an advowson or Church patronage, Succession Duty is not payable unless

and until a sale for money or money's worth takes place (*ibid.*, s. 24); Succession Duty is then payable upon the proceeds of sale. (*See* page 343.)

11. Where a succession comprises land on which timber, trees or wood are growing, Succession Duty is not payable in respect of such timber, trees or wood unless and until sold (F. A. 1910, 2nd and 3rd paragraphs of s. 61 (5), F. A. 1912, s. 9, and *see* page 342).

12. In the case of life insurance policies, it is expressly provided that the relation of predecessor and successor is not created between the insurers and the insured, or between the insurers and any assignee of the insured; but any assignment, disposition, or devolution of the moneys payable under such policy may create a succession liable to duty (S. D. A. 1853, s. 17). So, where the insured assigns the policy by way of gift during his lifetime and continues to pay the premiums, Succession Duty is payable on his death; but if the assignment was absolute and the donee pays the premiums from the date thereof, or the policy was fully paid, no Succession Duty is payable (Lord Advocate *v.* Robertson (or Fleming), [1897] A. C. 145, and *see* page 311).

13. Similar remarks apply to bonds or contracts for payment of money made solely for valuable consideration in money or money's worth (S. D. A. 1853, s. 17). Where marriage constitutes part of the consideration the case is excluded from this section (A.-G. (I.) *v.* Rathdonnell, [1896] W. N. 141), and so are cases where in marriage settlements mutual pecuniary obligations are entered into by the spouses or by relatives on their behalf (Lord Advocate *v.* Sidgwick (1877), 4 Rett. 815).

14. Where the value for Estate Duty, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, no Succession Duty is payable (F. A. 1894, s. 16 (3)). Thus, suppose *A* has property of his own

worth £600 and there is a nomination policy worth £200, no Succession Duty would be payable, as the whole together is under £1,000; but if settled property under £1,000 in value also passes, it is not exempted. Thus, if in the above instance property worth £700 also passes under a settlement, it would not be exempt from Succession Duty by reason of the fact that it is under £1,000. Although property settled otherwise than by the will is expressly excluded, the fact that the deceased settled his free estate by his will does not, of course, prevent the exemption from applying to such estate. As to what properties make up the estate not exceeding £1,000, *see* page 89.

15. The provision for reduction of the amount of Legacy and Succession Duty where the net free estate exceeds £1,000 is explained on page 283. If it is found that the total amount of Legacy Duty and Succession Duty is greater than the amount by which the net estate exceeds £1,000 the provision applies (F. A. 1914, s. 13 (2)). It does not, however, apply to property settled otherwise than by the will of the deceased. Where there are several successors, and different rates of duty are involved, an apportionment of the abated duty between the successors will be necessary. (*See also* page 391.)

In connection with this provision the abatement of Estate Duty where the margin above the limit of value is small should be noted (F. A. 1914, s. 13 (1), and *see* page 81). Where the estate exceeds £1,000 but does not exceed £1,010 relief may be obtained under both sub-sections.

16. Where Estate Duty has been paid, Succession Duty at £1 per cent. is not payable (F. A. 1894, s. 1, and F. A. 1894, s. 5 (2), as amended by F. A. 1898, s. 13) unless the taxable limits are exceeded (*see* page 324 *et seq.*).

This exemption applies—

(1) Where the property passing on the "*deceased's*" death in respect of which Estate Duty is payable

(not taking into account the exceptions mentioned on page 326) does not exceed £15,000 (F. A. 1910, s. 58 (2) (*a*)) ; or

(2) Where the limit of £15,000 is exceeded, but the value of the total *individual* benefit to any successor derived from the same testator, intestate, or predecessor, whether such benefit is a legacy or a succession (except where the first succession arose before the F. A. 1910, in which case the exemption applies irrespective of all questions of value), does not exceed £1,000 (F. A. 1910, s. 58 (2) (*b*)) or, in the case of a widow or infant child, does not exceed £2,000 (F. A. 1910, s. 58 (2) (*c*)).

The exemption from the £1 per cent. Succession Duty where Estate Duty has been paid applies not only where the successor takes absolutely, but also where the property passes to persons in succession. Once it has been established that the £15,000 limit is not exceeded the subsequent death of a life tenant does not give rise to any claim for the £1 per cent. duty on the property in question even though on his death other property liable to Estate Duty passes and the total exceeds £15,000. Conversely, if it is found that the £15,000 limit was exceeded on the original death which gave rise to a first succession, and that Succession Duty at £1 per cent. is chargeable, the fact that on the subsequent death of the life tenant the property passing for Estate Duty does not exceed £15,000 will not affect the further liability to Succession Duty at £1 per cent. under the original disposition in connection with the life tenant's death.

17. In the case of persons killed in the Great War, the Succession Duty payable in respect of property not exceeding £5,000 passing to the widow, lineal descendants,

lineal ancestors or brothers and sisters and their descendants was remitted (Death Duties (Killed in War) Act, 1914, s. 1 (1) (*a*) as extended by F. A. 1917, s. 29, F. A. 1918, s. 44, and F. A. 1919, s. 31). Where the estate exceeded that sum the Succession Duty (if any) on the first £5,000 was remitted and the Succession Duty (if any) on the rest was discounted for the period the deceased would have lived if he had enjoyed the normal expectation of life. (*See* page 167 *et seq.*)

Where any property again passed on the death of another person who was also killed in the war, the whole of the Succession Duty in respect of such property on the second death was remitted, whatever might have been the relationship of the successor (Death Duties (Killed in War) Act, 1914, s. 2, and F. (No. 2) A. 1915, s. 46). (*See* page 170.)

The remission under those provisions was extended by F. A. 1921, s. 43, to certain specified persons dying after 31st December, 1918, from causes arising out of the then state of disorder in Ireland (*see* page 170). A further extension of this remission, except that provided for in s. 2 of Death Duties (Killed in War) Act, 1914, was made by F. A., 1924, s. 38, as to members of the combatant forces dying after 31st August, 1921, from the causes specified while on active service and on service of a warlike nature or which in the opinion of the Treasury involves the same risks as active service. (*See* page 171.)

19. As noted on page 176, the Treasury were empowered to issue war securities free from taxation and they are not chargeable with Succession Duty in connection with the death of a person who was neither domiciled nor ordinarily resident in Great Britain.

CHAPTER XVI.

SUCCESSION DUTY.—PRACTICE.

FORMS in use: No. 1.—For legacies payable out of real estate or leaseholds. Estate Duty may be deducted as the legatee is liable to pay a proportion, unless the legacy is given free of such duty or is payable on the testator's death out of leaseholds given by will. Interest on duty is charged from the death, as the legacy carries interest from that date.

No. 2.—For annuities or rent charges charged wholly on real estate or leaseholds. The date of birth of the annuitant should be shown. Estate Duty may be deducted (unless the annuity is given free therefrom or is payable on the testator's death out of leaseholds given by will) and such deduction may generally be a percentage of the annuity at the same rate as Estate Duty. Thus, suppose the annuity were £50 charged on a freehold field called "Blackacre," on which Estate Duty had been paid at £4 per cent. The deduction against the annuity would be £4 per cent. on £50=£2; and therefore the annuity would be reduced to £48. The duty may be paid either by four equal yearly instalments, the first of which is due at the end of a year from death, or in full under discount. If the annuitant dies before all the instalments have been paid, those not due cease to be payable, and if the duty was paid in full under discount, application should be made on *Form* H, accompanied by the stamped account, for a return of duty equivalent to the instalments which would not have become due before the annuitant's death.

Where the annuity or rent charge is charged on the property by deed, the Succession Duty may be paid by eight half-yearly instalments, as in the case of a succession for

life to real estate, and if paid in full an equivalent discount would be allowed.

No. 4 in duplicate.—For personal property, not including leaseholds, under a settlement where duty is chargeable on the capital. This form is used where the successors become absolutely entitled, or where the property is taken by different persons in succession, who are all liable to the same rate of duty. The property is accounted for at its value at the date of the death giving rise to the claim, *i.e.*, the same value as for Estate Duty, and the Estate Duty may be deducted as may also brokerage and other costs of division and distribution actually, legally and necessarily incurred by the trustees. The duty is payable in full and cannot be paid by instalments. Interest on the duty is chargeable from death.

No. 5 in duplicate.—For personal property (not including leaseholds) where the duty is chargeable by way of annuity. A percentage of the income at the Estate Duty rate may be deducted in respect of Estate Duty as in the case of a No. 2 account. The account should show the annual income of the property without deduction for income tax and any uninvested capital and securities having a value, but not at the moment producing income, should be accounted for at say £4$\frac{3}{4}$ per cent. as representing the annual income of such items. The duty is payable in the same way as already detailed in the case of *Form* 2 (*see also* page 338).

No. 6 in duplicate.—For real and leasehold property, whether the successor takes for life only or for less than an absolute interest.

The account should show the gross rental of the property, or, if not let or occupied by the owner, the gross assessment to property tax, or, if not assessed to property tax, the gross assessment to poor rate. Deduction may be taken for any ground or chief rent, land tax, repairs (if

paid by the owner), drainage rent charge, or other annual charges on the property, such as tithe rent charge, and rates if paid by the owner. The deduction for repairs should be the average sum required to keep the property in order, but not including the cost of structural alterations or improvements. An average deduction would be £7½ per cent. to £10 per cent. of the gross rental for agricultural property, £20 per cent. for cottage and tenement property, and £15 per cent. for house property. If the property is let on a repairing lease so that the repairs are done by the tenant, no deduction for repairs should, of course, be taken. Income or property tax may not be deducted (*re* Elwes, 3 H. & N. 719), nor expenses of management (*re* Cowley (1866), L. R. 1 Ex. 288), nor, where the account is based on the gross assessment to property tax, may tithe rent charge, if the latter is separately assessed, and therefore allowed for in the assessment of the property.

If the property is subject to an annuity or terminable charge, deduction should be taken against the annual value, but a supplemental account for further duty will be required when the annuity or charge terminates. £4¾ per cent. interest on the Estate Duty may be deducted, except in the case of leasehold property under a will, in which case no deduction in respect of Estate Duty may be made (unless it is a further Estate Duty payable in consequence of the F. A. 1914, s. 14). Deduction may also be taken, (1) for £4¾ per cent. on sums (if any) spent by the successor, before becoming entitled in possession, in structural repairs or permanent improvements, (2) for the annual sum payable for interest on mortgages on the *corpus* of the property, (3) in respect of any fines, manorial payments or compensation due in respect of copyhold property, now enfranchised (as noted on page 340), and (4) in the case of licensed property, in respect of the compensation charge for the

year in which the time for delivery of the account occurs, the deduction being an annual sum representing the proportion which the tenant might deduct from that year's rent.

In the case of leases at ground rents, the time for payment of the further duty arrives when the lease expires or when it is surrendered, and in the latter case the account should be based on the increased rent or fine or other consideration payable in connection with the fresh lease, without any allowance for the period to elapse between the date of such fresh lease and the normal date of expiration of the old lease. When the lease expires normally, any sum received for dilapidations should be brought into account in fixing the allowance for repairs. If the successor purchases the unexpired term, allowance in respect of the sum so paid should be claimed. If the site has been built on by the successor, the account should be based on the new annual value, from which the old ground rent and an allowance for the sums spent in rebuilding may be deducted. Allowances in respect of all capital sums, fines or premiums may be taken at £4¾ per cent. interest, that being the present average rate of interest on trust securities.

The account should show the exact date of birth of the successor and his relationship to the predecessor, given in the terms of the Act, as shown on the back of the form. The duty may be paid by instalments, as explained on page 341, the first being due one year after the death. If paid in full, discount is allowed for a period of three years three months, less the time which has already elapsed between the date of the death and the delivery of the account. If the successor dies before all the instalments are paid, the half-yearly instalments which have not become due cease to be payable, and if the duty was paid in advance, application should be made on *Form* H, duly

sworn, and accompanied by the stamped receipt, for a return of a proportionate amount of the duty.

No. 6–1 in duplicate.—For real and leasehold property where the successor takes absolutely, including, presumably, a share of such property held in joint tenancy, and also real estate devolving under an intestacy (unless accounted for on *Form* 3 with the personal estate or, if sold, on *Form* 8).

The account should show the principal value as for Estate Duty and (except in the case of leasehold property under a will) Estate Duty should be deducted as well as expenses (if any) of raising the same. Allowance may also be taken for mortgages, and also for terminable annuities as noted on page 105 *et seq.* in the case of Estate Duty. It may be pointed out that where two or more persons succeed as tenants in common, duty is only chargeable on the value of each succession, *i.e.*, the separate value of each undivided share. In the result, the aggregate values of the separate successions may be less than the value of the entirety of the property. As undivided shares in land in England or Wales are now held upon trust for sale (L. P. A. 1925, ss. 34 and 39), the Succession Duty should be accounted for on *Form No.* 8, *infra*, or where such a share forms part of a residuary estate it may be included in the residuary account No. 3 with the personal estate.

The duty may be paid at once, in which case, if payment is made within the year, discount up to the end of the year will be allowed ; or it may be paid by the same instalments as Estate Duty, the first being due one year after the death. If the property is sold, exchanged or charged, all instalments now become payable (L. P. A. 1925, s. 17 (3), and L. R. A. 1925, s. 73 (6), and *see* page 332). If the duty is being paid by instalments and the successor dies before they are all paid, the remaining instalments are still payable, though the subsequent owner may continue to pay by instalments.

There is no provision corresponding to that relating to personal estate by which duty can be taken at once on the *corpus* of real estate and leaseholds, not directed to be sold, which devolve in succession on persons all liable to the same rate of duty.

No 7.—For the second and subsequent instalments of duty assessed on *Form* 6 by way of life interest.

No. 7–1.—For the second and subsequent instalments of duty assessed on *Form* 6–1 on capital value.

No. 8 in duplicate.—For the proceeds of real and leasehold property *directed to be sold*, and also for real estate under an intestacy, if sold.

The gross proceeds of sale should be included in the account, or if the property has not been sold, the same value as for Estate Duty. Estate Duty (except the Estate Duty payable in respect of leaseholds on the death of the testator), the costs of raising and paying same and also the costs of sale may be deducted. The account should be used where the successor takes the property absolutely, or where it is given to different people in succession, all of whom are liable to the same rate of duty. The duty is payable in full and cannot be paid by instalments, and interest on the duty is charged from the death, or alternatively and more correctly, rents up to the date of sale or up to the date of the account, if the property is unsold, should be included in the account and in that case interest on the duty is not chargeable.

No. 9 in duplicate.—For the cesser of terminable charges upon real and leasehold property.

This is mainly used when an annuity or rent charge on real or leasehold property ceases and the successor takes for life, or where although the successor takes absolutely, his original succession took place before the passing of the F. A. 1894, in which case the cesser of the

annuity is regarded as part of the original succession and Succession Duty would be payable by way of life interest as in the case of the original succession. The duty may be paid by the same instalments as the duty on the property itself, and, if paid in full, discount is allowed for three years and three months, less the time which has elapsed between the death of the annuitant and the delivery of the account. The duty is payable on the life interest of the successor, and his age is taken as at the date of death of the annuitant. Deduction may be taken for £4$\frac{3}{4}$ per cent. on the proper proportion of the Estate Duty, except where the whole of the Estate Duty has been allowed for in the original account.

Where the successor was competent to dispose and succeeded after the F. A. 1894, and deduction was taken in the original account for a "slice" of the property sufficient to produce the annuity, duty is payable on the death of the annuitant on the value of such "slice," and may, in the case of real estate and leaseholds, be accounted for on *Form* 6–1 in duplicate. In the case of personal estate, where the successor is competent to dispose, *Form* 4 should be used.

In the case of a gift *inter vivos* of personalty subject to an annuity payable to the donor, Succession Duty is assessed on the cesser of the annuity on its value for a perpetuity, *i.e.*, according to Table III of the S. D. A. 1853, at twenty-four and two-fifths years' purchase, and may be paid by four yearly instalments or in full subject to discount (Ld. Adv. *v.* McKersies, 19 S. L. R. 438). For instance, *A* in his lifetime gave £500 to *B*, subject to an annuity of £15 to himself for life and on his death to his wife for life. On the death of the wife Succession Duty is payable on the value of £15 per annum at twenty-four and two-fifths years' purchase, less the proper proportion of the

Estate Duty which would have been payable on the death of *A*. The value for Succession Duty may not, however, exceed the value of the fund, less Estate Duty thereon. Thus, if the rate of Estate Duty were £4 per cent. the limit of liability for Succession Duty would be £480. If, therefore, the reservation had been £20 or £25, as the value at twenty-four and two-fifths years' purchase would exceed £480, Succession Duty would in such case be payable on the latter sum only.

If in the above case the annuity had been charged on real estate, Succession Duty would apparently be payable on the value of the annuity for the life of the successor. The benefit accruing by the cesser of the annuity cannot be regarded as a substantive succession to real property within the meaning of the F. A. 1894, s. 18. If, however, the successor were a charity or a corporation, duty would be assessed in such a case on the value of the annuity for a perpetuity (S. D. A. 1853, ss. 16 and 27).

No. 10 in duplicate.—For the proceeds of a sale of timber. It should contain the gross proceeds of sale, with the date of sale and date of receipt of the proceeds. Deduction may be taken for necessary outgoings, as to which *see* page 335. The duty is assessed on the net proceeds, and interest is charged from the date when the proceeds of sale are received. In strictness, this form is only applicable where the death took place before the F. A. 1910, came into operation, but may be adapted for use in connection with deaths after that date, or in the alternative *Form No.* 8 or *Form No.* 1 may be used. If the timber unfelled is sold, either with or apart from the land, Succession Duty is payable on the value of the timber as at the date of death without any deduction except for Estate Duty, but an allowance would be made for any Succession Duty already paid on periodical sales.

If the property is settled, and a proportion or the whole of the moneys received in respect of timber becomes capita moneys so that the tenant for life receives only the income, the Succession Duty thereon should be accounted for on *Form No.* 6 in duplicate, the annual value being taken as £1¾ per cent. on the capitalized sum.

No. 19 in duplicate.—For duty payable in expectancy (*see* pages 123 and 344). This form is supplied when a commutation is agreed to. Where it is desired to commute, application in writing should be made, setting forth the facts fully, stating how the property and proceeds of sale are to be dealt with, and what are the circumstances which are considered to warrant a commutation. If the property devolves under a will, the full name of the testator, the date of his death, and the date and place of probate should be stated, and if under a deed, the original or a copy should be forwarded for notation.

General.—Where the free estate exceeds £1,000 the amount of Legacy and Succession Duty is limited to the amount of such excess (*see* page 283). If it is clear that the whole of the excess over £1,000 will be payable for Legacy and Succession Duty separate accounts are not required, and the duty will be assessed at the amount of the excess on a form prepared in the Estate Duty Office. It will, however, be necessary for the accountable parties to apportion the amount paid between the legatees and successors.

Applications for repayment of Succession Duty should be made by means of *Form* H, duly sworn to and accompanied by the receipted account. There is no limit of time fixed by statute within which applications for return of Succession Duty (or Legacy Duty) may be made, but no application would be entertained where the assessment was arrived at by agreement with the accounting parties, or where, by reason of lapse of time or for any other cause, the

evidence then procurable was of small or of doubtful value. Where property is given upon trust to sell and divide the proceeds and the duty is accounted for on the Estate Duty values, and afterwards the executors sell *qua* executors, an adjustment of Succession Duty (and Legacy Duty) in accordance with the sale prices could be applied for, assuming there is reasonable belief that there has been no alteration in value between the date of death and the date of sale (A.-G. *v.* Dardier (1883), 11 Q. B. D. 16).

Interest on Succession Duty is now chargeable at £4 per cent. (F. A. 1919, s. 30) and discount is allowed at the same rate. Interest is only chargeable against the Crown by statute or by express agreement (*re* Gosman (1881), 17 Ch. D. 771 (C. A.)), and there is no authority under which interest is allowable on any repayment of Succession Duty, but the interest actually paid on any returnable duty is, of course, repayable.

As to the method of rendering the accounts and paying the duty, including payment by transfer of war securities, and as to payment in and payment out of Court and the forms of certificate in use, *see* concluding paragraphs of Chapter VI., page 220 *et seq.*, on Estate Duty Practice.

All the forms in use may be obtained from the Controller, Estate Duty Office, Somerset House, W.C.2, on personal application or by letter, and except *Forms* 10, 19 and H, they may also be obtained at Head Post Offices outside the Metropolitan Postal District, and at the Throgmorton Avenue Post Office, London Wall, E.C.2, on personal application.

Forms for use in Scotland can be obtained from the Registrar, Estate Duty Office, Edinburgh (*see* page 223).

APPENDIX.

STATUTES RELATING TO DEATH DUTIES.

LEGACY DUTY ACT, 1796.

[36 George III, Chapter 52.]

[26th April, 1796.

As to rates see Stamp Act, 1815, infra.

6. And the duties hereby imposed shall, in all cases in which it is not hereby otherwise provided, be accounted for, answered and paid by the person or persons having or taking the burthen of the execution of the will or other testamentary instrument, or the administration of the personal estate of any person deceased, upon retainer for his, her or their own benefit, or for the benefit of any other person or persons, of any legacy or any part of any legacy, or of the residue of any personal estate or any part of such residue, which he, she or they shall be entitled so to retain either in his, her or their own right, or in the right or for the benefit of any other person or persons, and also upon delivery, payment or other satisfaction or discharge whatsoever of any legacy or any part of any legacy, or of the residue of any personal estate or any part of such residue, to which any other person or persons shall be entitled; and in case any person or persons having or taking the burthen of such execution or administration as aforesaid shall retain for his, her or their own benefit, or for the benefit of any other person or persons, any legacy or any part of any legacy, or the residue of any personal estate, or any part of such residue, which such person or persons shall be entitled so to retain, either in his, her or their own right, or in the right or for the benefit of any other person or persons, and upon which any duty shall be chargeable by virtue of this Act, not having first paid such duty, or shall deliver, pay or otherwise howsoever satisfy or discharge any legacy or any part of any legacy, or the residue of any personal estate or any part thereof, to which any other person or persons shall be entitled, and upon which any duty shall be chargeable by virtue of this Act, having received or deducted the duty so chargeable, then and in every of such cases the duty which shall be due and payable upon every such legacy and part of legacy and residue and part of residue respectively, and which shall not have been duly paid and satisfied to his Majesty, his heirs and successors, according to the provisions of this Act, shall be a debt of such person or persons having or taking the burthen of such execution or administration as aforesaid to his Majesty, his heirs and successors; and in case any such person or persons so having or taking the burthen of such execution or administration as aforesaid shall deliver, pay or otherwise howsoever satisfy or discharge any such legacy or residue or any part of any such legacy or residue, to or for the benefit of any person or persons entitled thereto, without having received or deducted the duty chargeable thereon (such duty not having been first duly paid to his Majesty, his heirs or successors, according to the provisions herein contained), then and in every such case such duty shall be a debt to his Majesty, his heirs and successors, both of the person or persons who shall make such delivery, payment, satisfaction or discharge, and of the person or persons to whom the same shall be made.

As to what are deemed legacies, see Revenue Act, 1845, *s.* 4, infra.

8. And the value of any legacy given by way of annuity, whether payable annually or otherwise, for any life or lives or for years determinable on any life or

lives, or for years or other period of time, shall be calculated and the duty chargeable thereon shall be charged according to the tables [1] in the schedule hereunto annexed, and the duty chargeable on such annuity shall be paid by four equal payments, the first of which payments of duty shall be made before or on completing the payment of the first year's annuity, and the three others of such payments of duty shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity respectively; and the value of any such annuity, if determinable upon any contingency besides the death of any person or persons, shall be calculated without regard to such contingency: Provided always, that if any such annuity shall determine by the death of any person before four years' payment of such annuity shall become due and payable, then and in such case the duty shall be payable in proportion only to so many of the payments of the said annuity as actually accrued and became due and payable; and in case any such annuity shall at any time determine upon any other contingency than the death of any person or persons, then and in such case not only all payments of duty which would otherwise become due after the happening of such contingency, if any such would become due, shall cease, but it shall be lawful for the person or persons who shall have paid any duties which shall have previously become due to apply for and obtain a return of so much of the duty so paid as will reduce the same to the like duty as would have been payable by such person or persons for such annuity, calculated according to the term for which the same shall have endured, which abatement the said commissioners for management of the stamp duties shall settle and determine according to the tables in the schedule hereunto annexed, and shall cause the amount of such abatement to be paid to the person or persons entitled to the same out of any monies in their hands arising from the duties imposed by this Act.

9. And the value of any legacy given by way of annuity for any life or lives, or for years determinable on any life or lives, or for years or other period of time, and charged on and made payable out of any other legacy or legacies, shall be calculated, and the duty shall be charged thereon, in the same manner as hereinbefore directed with respect to other annuities; and the duty on the legacy charged with such annuity, if any duty shall be payable for such legacy, shall be calculated on the value of such legacy after deducting the value of such annuity; and the duty for such annuity shall be paid by the person or persons entitled to the legacy or legacies charged with such annuity by four equal payments, in the same manner as the same would be payable according to the provisions hereinbefore contained if such annuity had been a direct gift to the annuitant, and subject to the like proviso in case such annuity shall determine before four years' payment shall become due; and the payment which shall be made for such duty shall be retained by the person or persons paying the same out of the first four years' payments of such annuity, if so many shall become due, or out of so many of such payments as shall become due, by equal portions.

10. And the duty payable upon any legacy given by direction to purchase with any personal estate of the testator or testatrix, or any part thereof, an annuity of a certain amount for the life or lives of any person or persons, or any other term, shall be calculated upon the sum necessary to purchase such annuity according to the tables before mentioned, and shall be deducted from such sum and paid as in the case of other pecuniary legacies; and the person or persons paying or satisfying such legacy, and the person or persons for whose benefit the same shall be paid or satisfied, shall be discharged by payment of such duty so calculated as aforesaid,

[1] These tables were repealed and the tables in the Succession Duty Act, 1853, substituted (*see* s. 31 of that Act).

from all other demands in respect of the duty payable on such legacy; and the annuity to be purchased for the benefit of the person or persons entitled to the benefit of such legacy shall be reduced in proportion to the amount of the duty payable thereon as aforesaid, such reduction to be calculated in the same manner as the duty so payable is hereinbefore directed to be calculated; and the purchase of such reduced annuity, together with the payment of such duty, shall satisfy and discharge such legacy as fully as if an annuity had been purchased equal in amount to the annuity so directed to be purchased.

11. And if any benefit shall be given by any will or testamentary instrument in such terms that the amount or value of such benefit can only be ascertained from time to time by the actual application for that purpose of the fund allotted for such purpose or made chargeable therewith, or if the amount or value of any benefit given by any will or testamentary instrument cannot by reason of the form and manner of the gift be so ascertained that the duty can be charged thereon under any other of the directions herein contained, then and in every such case such duty shall be charged upon the several sums of money or effects which shall be applied from time to time for the purposes directed by such will or testamentary instrument as separate and distinct legacies or bequests, and shall be paid out of the fund applicable for such purposes or charged with answering the same.

12. And the duty payable on the legacy or residue or part of residue of any personal estate given to or for the benefit of or so that the same shall be enjoyed by different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the legacy or residue or part of residue so given, as in the case of a legacy to one person; and where any legacy or residue or part of residue shall be given to or for the benefit of or so that the same shall be enjoyed by different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who under or in consequence of any such bequest shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such bequest in the same manner as if the annual produce thereof had been given by way of annuity; and such persons respectively shall be so chargeable with such duty and the same shall be payable, when they shall respectively become entitled to and begin to receive such produce, and shall be paid by equal portions during the aforesaid term of four years, if they shall so long continue to receive such produce; and where any other partial interest shall be given or shall arise out of such property so to be enjoyed in succession, the duty on such partial interest shall be charged and paid in the same manner as the duty is hereinbefore directed to be charged and paid in like cases of partial interests charged on any property given otherwise than to different persons in succession; and all and every person and persons who shall become absolutely entitled to any such legacy or residue or part of residue so to be enjoyed in succession shall, when and as such person or persons respectively shall receive the same or begin to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as shall be so received or of which the benefit shall be so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property shall have been given to be enjoyed or in such manner that the same shall be enjoyed in succession.

13. And the duty payable on any legacy or residue or part of residue so given to or so to be enjoyed by different persons in succession, upon whom the duty shall be chargeable at one and the same rate, shall be deducted and paid by the person or persons having or taking the burthen of the execution of the will or testamentary instrument under which the title thereto shall arise, upon payment or other satisfaction or discharge of every or any part of such legacy or residue or part of residue to any trustee or trustees or other person or persons to whom the same shall be

payable or paid in trust or for the benefit of the persons so entitled thereto in succes sion ; and if the same shall not be so paid or satisfied to any such trustee or trustees then such duty shall be deducted and paid out of the capital of the property s given, upon receipt by any of the persons so entitled in succession of any produc of such capital or any part thereof, according to the amount of the capital of whic such produce shall be so received ; and where the duty chargeable upon any suc bequest for the benefit of or to be enjoyed by different persons in succession shall b chargeable at different rates, so that the same cannot be paid at one and the sam time, but must be paid in succession as aforesaid, then and in such case all and every the person and persons having or taking the burthen of the execution of the wil or testamentary instrument in which such bequest shall be contained, shall b chargeable with such duties in succession, in the same manner as such persons woul be chargeable with the like duties in case of immediate bequest, unless the property bequeathed shall have been paid or otherwise satisfied to or vested in any trustee or trustee as aforesaid, in which case such trustees or trustee, or his, her or thei representatives, shall be chargeable with the duties for and in respect of such property so vested in him, her or them respectively, in such and the same manner as if he she or they had had or taken the burthen of the execution of the will or testamentary instrument by which such bequest shall have been made ; and in like manner where any partial interest shall be given or shall arise out of any such property s to be enjoyed in succession, and such partial interest shall be satisfied or paid b the person or persons so enjoying such property, such person or persons shall b chargeable with the duties for and in respect of such partial interest, and shal retain and pay the same accordingly, in such and the same manner as if he, she o they had had or taken the burthen of the execution of the will or testamentary instrument by which such partial interest shall have been created ; and in all suc cases the person or persons so chargeable with duty shall be debtors to the King' Majesty, his heirs and successors, in like manner, and shall be subject to the lik penalties, as the person or persons having or taking the burthen of the executio of such will or testamentary instrument are hereby made chargeable an subject to.

14.[1] Provided always, that no duty shall be paid on any articles of plate furniture or other things not yielding any income, [and given to or for the benefi of or so as that the same be enjoyed by different persons in succession,] whils the same shall be [so] enjoyed in kind only by any person or persons [not havin any power of selling or disposing thereof, so as to convert the same into mone or other property yielding an income] ; but if the same shall be actually sol or disposed of, [or shall come to any person or persons having power to sell o dispose thereof or having an absolute interest therein,] then and in each and ever such case the [same] duty shall be chargeable and paid thereon [as if the same ha been originally given absolutely and with full power to sell or dispose thereof and shall be chargeable upon and paid by the person or persons for whose benefi the same shall be sold, [or who shall have power to sell or dispose thereof or a absolute interest therein,] and shall become the debt of such person or person but shall not be a charge on any person or persons by reason of his, her or thei having assented to such bequest as the person or persons having or taking th burthen of the execution of the will or testamentary instrument by which suc bequest shall have been made.

15. Provided always, that where any legacy or any residue or part of residu shall be so given by any will or testamentary instrument that different person shall become entitled thereto in succession, the duty shall be charged thereon a given to be enjoyed in succession, whether the person or persons entitled theret

[1] The words in square brackets were repealed by F.A. 1910, s. 96 (1), so far as s. 14 applies objects which appear to the Treasury to be of national, scientific, historic, or artistic interest.
See also F. A. 1921, s. 44.

shall take the same under or by virtue of such will or testamentary instrument and the dispositions therein contained, or in default of such dispositions and as entitled by intestacy.

16. And where any legacy, or residue or part of residue shall be given to or for the benefit of any person or persons in joint tenancy, some or one of whom shall be chargeable with any duty hereby imposed, and some or one of whom shall not be so chargeable, the person or persons chargeable with duty shall pay such duty in proportion to the interest of such person or persons respectively in such bequest; and if any person or persons chargeable with duty and entitled in joint tenancy as aforesaid shall become entitled by survivorship or by severance of the joint tenancy to any larger interest in the property bequeathed than that in respect of which such duty shall have been paid, then and in such case all and every such person or persons so becoming entitled by survivorship or by severance shall be charged with the same duty as if the property to which such joint tenant or joint tenants shall so become entitled had been originally given to or for the benefit of such person or persons only.

17. And when any legacy, or any residue or part of residue shall be given subject to any contingency which may defeat such gift, and whereupon the same may go to some other persons or person, such bequest (unless chargeable as an annuity under the provisions herein contained) shall be charged with duty as an absolute bequest to the person or persons who shall take the same subject to such contingency, and such duty shall be paid out of the capital of such legacy or residue or part of residue, notwithstanding the same may upon such contingency go to some person not chargeable with the same duty or with any duty; and if such contingency shall afterwards happen, and the property so bequeathed shall thereupon go in such manner that the same if taken immediately after the death of the testator or testatrix, under the same title would have been chargeable with a higher rate of duty than the duty so paid, the person or persons becoming entitled thereto shall be charged with and shall pay the difference between the duty so paid and such higher rate of duty.

18. And where any legacy or the residue or any part of the residue of any personal estate shall be subjected to any power of appointment to or for the benefit of any person or persons specially named or described as objects of such power, such property shall be charged with duty as property given to different persons in succession; and in so charging such duty, not only the person and persons who shall take previous or subject to such power of appointment, but also any person and persons who shall take under or in default of any such appointment, when and as they shall so take respectively, shall in respect of their several interests, whether previous or subject to or under or in default of such appointment, be charged with the same duty and in the same manner as if the same interests had been given to him, her or them respectively in and by the will or testamentary disposition containing such power, in the same order and course of succession as shall take place under and by virtue of such power of appointment, or in default of execution thereof, as the case may happen to be; and where any property shall be given for any limited interest, and a general and absolute power of appointment shall also be given to any person or persons to whom the property would not belong in default of such appointment, such property upon the execution of such power shall be charged with the same duty and in the same manner as if the same property had been immediately given to the person or persons having and executing such power, after allowing any duty before paid in respect thereof; and where any property shall be given with any such general power of appointment, which property in default of appointment will belong to the person or persons to whom such power shall also be given, such property shall be charged with and shall pay the duty by this Act imposed, in the same manner as if such property had been given to such person or persons absolutely in the first instance, without such power of appointment.

19. And any sum of money or personal estate directed to be applied in th purchase of real estate shall be charged with and pay duty as personal estate unless the same shall be so given as to be enjoyed by different persons in succession and then each person entitled thereto in succession shall pay duty for the sam in the same manner as if the same had not been directed to be applied in the pu:chas of real estate, unless the same shall have been actually applied in the purchase o real estate before such duty accrued; but no duty shall accrue in respect thereo after the same shall have been actually applied in the purchase of real estate, for s much thereof as shall have been so applied: Provided nevertheless, that in case before the same or some part thereof shall be actually so applied, any person o persons shall become entitled to an estate of inheritance in possession in the rea estate to be purchased therewith or with so much thereof as shall not have bee applied in the purchase of real estate, the same duty which ought to be paid b such person or persons, if absolutely entitled thereto as personal estate by virtu of any bequest thereof as such, shall be charged on such person or persons, an raised and paid out of the fund remaining to be applied in such purchase.

20. And estates *pur autre Vie*, applicable by law in the same manner as persona estate, shall be charged with the duties hereby imposed as personal estate.

21. Provided always, that if any direction shall be given by any will o testamentary instrument for payment of the duty chargeable upon any legac or bequest out of some other fund, so that such legacy or bequest may pass t the person or persons to whom or for whose benefit the same shall be given fre of duty, no duty shall be chargeable upon the money to be applied for the paymen of such duty, notwithstanding the same may be deemed a legacy to or for the benefi of the person or persons who would otherwise pay such duty.

22. And in cases of specific legacies, and where the residue of any persona estate shall consist of property which shall not be reduced into money, it shall b lawful for the person or persons having or taking the burthen of the administratio of such effects, or the person or persons by whom the duty thereon ought to b paid, to set a value thereon and offer to pay the duty according to such valu or to require the commissioners for management of the stamp duties to appoin a person to set such value, at the expense of the person or persons by whom suc duty ought to be paid; and it shall be lawful for the commissioners to accept th duty offered to be paid upon the value set by the person or persons having or takin the administration of such effects, or by whom the duty for the same shall b payable, without such appraisement, if the said commissioners shall think fit s to do; but if the said commissioners shall not be satisfied with the value so se on which the duty shall be so offered, it shall be lawful for the said commissioner notwithstanding such offer, to appoint a person to appraise such effects and to s the value thereon, on which value so set the said commissioners shall assess th duty payable in respect thereof and require the same to be paid. . . .

23. And where any legacy or part of any legacy, or residue or part of residu whereon any duty shall be chargeable by this Act shall be satisfied otherwise tha by payment of money or application of specific effects for that purpose, or shall b released for consideration or compounded for less than the amount or value thereo then and in such case the duty shall be charged and paid in respect of such legac or part of legacy or residue or part of residue according to the amount or valu of the property taken in satisfaction thereof, or as the consideration for releas thereof or composition for the same: Provided always, that if any legacy o bequest shall be made in satisfaction of any other legacy or bequest or title t any residue or part of residue of any personal estate remaining unpaid, the dut shall not be paid on both subjects, although both may be chargeable with duty but shall be paid on the subject yielding the largest duty.

24. And if any person or persons having or taking the burthen of the executio of the will or other testamentary instrument or the administration of the persona

estate of any person deceased, or any other person or persons hereby made chargeable with duty, shall declare himself, herself or themselves ready and willing, and shall accordingly offer to pay any pecuniary legacy or residue or part of residue, deducting the duty payable thereon, or shall in like manner offer to deliver or otherwise dispose of any specific legacy or any specific property, part of any residue of any personal estate, to or for the benefit of the person or persons entitled thereto, or to any trustee or trustees for such person or persons, upon payment of the duty payable in respect thereof, and the person or persons entitled to such legacy or residue or part of residue, or the trustee or trustees for such person or persons, shall refuse to accept such offer and to give a proper release and discharge for such legacy or residue, or so much thereof as shall be offered to be paid, delivered or otherwise disposed of as aforesaid, then and in such case, although no actual tender shall be made, if any suit shall be afterwards instituted for such legacy or effects respecting which such offer shall have been made, it shall be lawful for the court in which such suit shall be instituted to order all costs, charges and expenses attending the same to be paid by the person or persons who shall have refused to accept such offer and to give or join in such release or discharge, or to order such costs, charges and expenses to be deducted and retained out of such legacy or effects, together with the duty payable thereon, as the said court shall see fit; and in case any suit shall be instituted for payment of any legacy or residue or part of residue of any personal estate, and the person or persons sued for the same shall be desirous of staying proceedings in such suit, on payment of the money due, or delivering or otherwise disposing of the specific effects demanded, after deducting or receiving the duty payable thereon, it shall be lawful for the court in which such suit shall be instituted, if it shall see fit, on application in a summary way, to make such order for payment of such legacy or residue or part of residue, or for delivering or otherwise disposing of such effects, and for payment of the duty payable thereon, and all such costs, charges and expenses attending such suit, as shall be just.

25. And if any suit shall be instituted concerning the administration of the personal estate of any person dying testate or intestate, or any part of such estate, in which any direction shall be given touching the payment of any legacies or legacy of such person, or the residue of his or her personal estate, or any part thereof, the court wherein such suit shall be instituted shall, in giving directions concerning the same, provide for the due payment of the duties hereby imposed; and in taking any account of any personal estate or otherwise acting concerning the same, such court shall take care that no allowance shall be made in respect of any legacy or part of legacy or of any residue or part of residue in any manner whatsoever without due proof of the payment of the duties hereby imposed.

And see Succession Duty Act, 1853, *s.* 53.

26. Provided always, that any person or persons having or taking the burthen of the execution of any will or other testamentary instrument or the administration of the personal estate of any person deceased may from time to time pay, deliver or otherwise dispose of any legacy or any part of any legacy, or make distribution of any part of the residue of any personal estate, on payment from time to time, of such proportions of the duty hereby imposed as shall accrue in respect of such part of such personal estate as shall be so administered.

27. And no person or persons having or taking the burthen of the execution of any will or testamentary instrument or the administration of the personal estate of any person deceased, nor any trustee or trustees or other person or persons hereby directed and required to account for any duty, shall from and after the passing of this Act pay, deliver or otherwise dispose of or in any manner satisfy, discharge or compound for any legacy whatsoever or any part thereof, or the residue of any personal estate or any part thereof, in respect whereof any duty is hereby imposed,

without taking a receipt or discharge in writing for the same, expressing the date of such receipt or discharge, and the names of the testator, testatrix or intestate under whose will or testamentary disposition or upon whose intestacy the title to such legacy or part of legacy or to such residue or part of residue shall accrue, and of the person or persons to whom such receipt or discharge shall be given, and of the person or persons to whom such legacy or residue or part of residue shall have been given or shall have belonged in consequence of intestacy, and the amount or value of the legacy or part of legacy or residue or part of residue for which such receipt or discharge shall be given, and also the amount and rate of the duty payable and allowed thereon; and that no written receipt or discharge for any legacy or part of any legacy, or for the residue of any personal estate or any part of such residue, in respect whereof any duty is hereby imposed, shall be received in evidence or be available in any manner whatever unless the same shall be stamped as required by this Act; and no evidence whatsoever shall be given of any payment, satisfaction or discharge whatsoever, or of any release or composition of such legacy or any part thereof, or of such residue or any part thereof, without producing such receipt or discharge duly stamped as aforesaid, unless the actual payment of the duty hereby imposed shall first be given in evidence: Provided always, that a copy of the entry in the books of the commissioners of the stamps of the payment of such duty shall be admitted as evidence thereof: Provided also, that payment of any annuity shall not be deemed a payment for which such stamped receipt shall be required under the directions of this Act, except the several payments which shall complete the payments for each of the first four years during which such annuity shall be payable; and in like manner any payment in respect of any legacy or bequest hereby directed to be charged with the duty in the same manner as annuities are hereby made chargeable with duty, shall not be deemed a payment for which such stamped receipt shall be required, except the several payments which shall complete the payments for each of the first four years in respect of which such legacy or bequest shall be chargeable with duty as an annuity.

28. And any person having or taking the burthen of the execution of any will or testamentary instrument or the administration of the personal estate of any person deceased, and any trustee or trustees or other person or persons hereby directed and required to account for any duty, who shall pay, deliver or otherwise dispose of, or in any manner satisfy or discharge or compound for any legacy given by such will or testamentary instrument, or the residue or any part of the residue of such personal estate, to or for the benefit of any person or persons entitled to such legacy or any part thereof, or to such residue or any part thereof, without taking such receipt or discharge in writing as aforesaid, and causing the same to be stamped within the time hereby allowed for stamping the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money, or the value of the property if not money, for which such receipt or discharge ought to have been given in pursuance of this Act; and all and every person and persons receiving or taking the benefit of any such money or other property without giving a written receipt or discharge for the same, in which the duty payable in respect thereof shall be expressed to have been allowed or paid to the person or persons to whom such receipt or discharge shall be given, and which shall bear date on the day of signing the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money or on the value of the property, so received or taken.

29. And every such receipt or discharge shall be brought, within the space of twenty-one days after the date thereof, to the said head office of the said commissioners, or to some other office to be appointed by the said commissioners for such purpose, to be stamped, paying the duty for the same; and upon such payment, either at the said head office or at any other office to be appointed as aforesaid, the receiver general or other proper officer to be appointed for that purpose by the said commissioners, as the case shall require, shall write upon such receipt or discharge an acknowledgment of the payment of the duty so paid in words at

length, and bearing date the day on which such payment shall be made, and shall subscribe his name thereto, and enter an account thereof in a book or books to be provided for that purpose, to the intent that he may be thereby charged with the sum so paid; and in case the duty shall be so paid at the said head office, then the receipt or discharge so brought to be stamped shall be forthwith stamped with one of the said four stamps as the case shall require; and in case the duty shall be so paid at any other office to be appointed by the said commissioners as aforesaid, the receipt or discharge whereon such acknowledgment of the payment of duty shall be so written and subscribed shall be transmitted, within the space of twenty-one days from the day of payment of such duty, to the said head office to be stamped, and the same shall be stamped accordingly with one of the said four stamps, as the case shall require; and in case the person or persons paying such duty at any such office to be appointed as aforesaid shall be desirous that the same should be transmitted to the said head office by the officer to whom such duty shall be paid, and shall leave the same with such officer for such purpose, such officer shall thereupon sign and deliver an acknowledgment that such receipt or discharge has been left with him for such purpose, and shall transmit such receipt or discharge to such head office to be stamped as aforesaid, and the same shall be sent again to such officer as soon as conveniently may be after the stamping thereof, and such officer shall deliver back the same to the person or persons entitled thereto, upon re-delivery to him of the acknowledgment which he shall have given for the same: Provided always, that if any such receipt or discharge shall not be so brought to any such office as aforesaid within such space of twenty-one days as aforesaid, it shall nevertheless be lawful to carry such receipt or discharge to the said head office to be stamped in like manner within three calendar months after the date thereof, paying the duty for the same, and also the further, sum of ten pounds *per centum* on such duty, by way of penalty for not having before paid such duty, on payment of which duty and penalty the said commissioners are hereby authorized and required to stamp such receipt or discharge in the same manner as if the same had been brought to the said office within the space of twenty-one days from the date thereof; but the said commissioners, or any of their officers shall not on any pretence whatever, except as hereinafter directed, stamp any vellum, parchment or paper, upon which any receipt or discharge for any legacy or part of legacy, or any residue of any personal estate or any part thereof, shall be written or signed, with the said new stamps or any of them, unless the duty for the same shall be paid, and such receipt or discharge shall be produced to be so stamped in manner aforesaid, within the times and in the manner hereinbefore respectively limited and appointed.

And see Probate & Legacy Duties Act, 1808, *s.* 44.

30. And if it shall appear to the satisfaction of the said commissioners of stamp duties, upon oath or affirmation to be administered by a justice of the peace, or master or masters extraordinary in Chancery, which oath or affirmation such persons are hereby empowered to administer, that less duty has been paid for any legacy or residue or part of residue than ought to have been paid for the same by mistake, without any intention to defraud, and if application shall be made to the said commissioners to rectify such mistake and accept the duty really due before any suit shall be instituted concerning the same, and within three calendar months after payment of the money actually paid instead of the just duty, it shall be lawful for the said commissioners to accept the difference between the money paid and the just duty, together with the sum of ten pounds *per centum* on such difference, by way of penalty, in full for the just duty, and which shall be in discharge of all penalties incurred by non-payment of such duty, and to cause an acknowledgment of the payment of the just duty to be written on the receipt or discharge given for such legacy or residue or part of residue, and to be subscribed by the proper officer, and also to cause such receipt or discharge to be properly stamped,

if necessary, in the same manner as would have been done if the just duty had been originally paid.

And see Customs & Inland Revenue Act, 1880, *s.* 12, *and Customs & Inland Revenue Act*, 1888, *s.* 14.

31. Provided always, that the party or parties paying or satisfying any legacy or any residue of any personal estate or any part of such residue, or receiving the same, contrary to the provisions of this Act, who shall, within the space of twelve calendar months after the offence committed, discover the other party or parties offending therein, so that such party or parties so discovered be thereupon convicted, such person so discovering shall be indemnified and discharged from all penalties incurred for any offence against this Act.

32. *This section provided for payment of a legacy or residue into Court in certain specified cases. It also made provision where money had been improperly paid in and where more or less than the proper duty had been paid. The section was however repealed, except as to Scotland, by The Trustee Act*, 1893, *s.* 51.

33. *This section deals with compounding duties, but is not of practical importance* (*see now Customs & Inland Revenue Act*, 1880, *s.* 11; *Customs & Inland Revenue Act*, 1881, *s.* 43; *and F. A.* 1894, *s.* 13).

34. And if at any time after payment of duty on any legacy or residue or part of residue of the personal estate of any person deceased any debt shall be recovered against the estate of such deceased person, or any loss shall happen, by reason whereof, or for any other just cause, any legatee or other person by whom any legacy or part of legacy or any residue of any personal estate hath been received or retained shall be obliged to refund the same or any part thereof, then in every such case it shall be lawful for the said commissioners of stamp duties, and they are hereby required, on due proof made on oath as aforesaid to their satisfaction, of the amount of such sums refunded, and that by reason thereof there hath been an over-payment of duty, to settle and adjust the amount of such over-payment, and to repay the same out of the money in their hands arising from the duties by this Act imposed, or to allow the same in future payments, as the case may permit or require.

35. And whenever any person or persons having or taking the burthen of the execution of any will or testamentary instrument or the administration of any personal estate as aforesaid shall be entitled to any legacy or the residue or any part of the residue of the personal estate of any testator, testatrix or intestate, such person shall be chargeable with the duty whenever he, she or they shall be entitled, in the due course of administration, to retain to his, her or their own use any part of the said estate in satisfaction of such legacy or residue or any part thereof; and every such person, before any such retainer, shall transmit to the said commissioners of stamp duties or their officers a note containing the particulars of such legacy, residue or part of residue intended to be retained, and the amount or value thereof, and the duty which such person or persons shall offer to pay thereon; and the said commissioners shall charge and assess the duty thereon in such manner as the duty shall be chargeable thereon by virtue of the provisions in this Act contained, and such duty shall be paid accordingly; and on payment of the said duty the said receiver general of the said duty or officer appointed to receive the same shall at the foot of a duplicate of the said assessment duly stamped, in such manner as the said commissioners shall direct for such purpose, give a receipt for such duty in such form of words as the said commissioners shall direct, which receipt shall be a discharge for the duty expressed therein; and in case any such person or persons shall neglect to pay such duty as aforesaid within fourteen days after the same ought to have been paid as aforesaid, every such person and persons shall forfeit and pay treble the value of the duty which ought to have been paid.

37. And if the authority under or by colour of which any person shall have administered the estate or effects of any person deceased or any part thereof shall be void or be repealed or declared void and such person shall before the avoidance,

repeal or declaration of avoidance have paid any duty hereby imposed or any duty imposed by any of the said former Acts, which shall not be allowed to such person out of the estate or effects of such deceased person, by reason that the same duty was not really due or payable, the money paid for such duty shall, on proof thereof to the satisfaction of the said commissioners of stamp duties, be repaid to the person or persons who shall have paid the same, or his, her or their representatives, by the said commissioners out of any monies in their hands arising from the duties imposed by this Act or the said former Acts ; but in case such duty ought to have been paid by the rightful executor or executors, administrator or administrators, of such deceased person, then and in such case the payment of such duty shall be valid and effectual notwithstanding such avoidance, repeal or declaration of avoidance, as aforesaid ; and no such person shall by reason of the avoidance, repeal or declaration of avoidance of such authority be sued, molested or troubled for or in respect of such payment ; but all such payments in respect of the said duty shall be allowed in account with such rightful executor or executors, administrator or administrators, and the same shall be deemed payment in the due course of administration as fully and effectually as if such payments had been made by rightful executors or administrators, any law, usage or custom to the contrary notwithstanding.

38. And if any person or persons, upon any oath or affirmation before the said commissioners of stamp duties or commissioners of land tax, or any person or persons authorized by this Act to administer any such oath or affirmation, shall wilfully and corruptly swear, affirm or allege any matter or thing which shall be false or untrue, with intent to defraud his Majesty of any of the said duties hereby imposed, or with intent to charge any person or persons with any greater or other duty than such person or persons ought to be charged with, every such person or persons so offending, and being thereof duly convicted, shall be and is and are hereby declared to be subject and liable to such pains and penalties as by any law now in being any person convicted of wilful and corrupt perjury is subject and liable to.[1]

39. And if any person shall alter any word, letter, figure or number in any assessment or receipt to be made or given in pursuance of this Act for any of the said duties, after the same shall have been signed by the officer appointed to sign the same according to the directions of this Act, or shall utter or publish as true any such altered assessment or receipt with intent to defraud his Majesty, his heirs or successors, or any other person or persons, then and in such case every person so altering, uttering or publishing as aforesaid shall forfeit and pay the sum of five hundred pounds.

41. Provided always, that every receipt or discharge for any legacy or any part of any legacy, or for any residue or part of residue of any personal estate, which shall be duly stamped as required by this Act, shall be free and discharged from all stamp duties imposed by the said recited Acts or by any other Act of Parliament upon receipts or discharges for money ; and that every such receipt or discharge which shall be duly stamped as required by the said recited Acts, and upon which no new duty is imposed by this Act, shall be also free and discharged from any stamp duty imposed by any other Act upon receipts or discharges for money.

43. And one moiety of all pecuniary penalties and forfeitures hereby imposed, where no other mode of prosecution is specially prescribed by this Act, shall, if sued for within the space of three calendar months from the time of any such penalty or forfeiture being incurred, be to his Majesty, his heirs and successors, and the other moiety thereof, with full costs of suit, to the person or persons who shall inform or sue for the same within the time aforesaid, and which shall and may be sued for in his Majesty's Court of Exchequer at Westminster for offences committed

[1] *See* the Perjury Act, 1911.

in England, or in his Majesty's Court of Exchequer in Scotland for offences committed in Scotland, by action of debt, bill, plaint or information, wherein no essoin, privilege, wager of law or more than one imparlance shall be allowed: but nevertheless it shall be lawful for his Majesty's attorney general in England, or his Majesty's advocate in Scotland, in case it shall appear to his satisfaction that such penalty was incurred without any intention of fraud, to stop all further proceedings, by entering a noli prosequi or otherwise, with respect as well to the share of such penalty claimed by such informer or informers as to the share thereof belonging to his Majesty.

See Inland Revenue Act, 1868, *s.* 9, *and Inland Revenue Regulation Act*, 1890, *ss.* 22, 32, 33, 35.

44. Provided always, that in default of prosecution within the time hereinbefore limited no such penalty or forfeiture shall be afterwards recoverable, except in the Name of his Majesty's attorney general in England and of his Majesty's advocate in Scotland, by information in the Court of Exchequer in England or Scotland respectively, in which case the whole of such penalty or forfeiture shall belong to his Majesty, his heirs and successors; and that all penalties and forfeitures and shares of penalties and forfeitures incurred as aforesaid belonging to his Majesty, his heirs or successors, shall be paid into the hands of the receiver general of his Majesty's stamp duties for the time being, any law, usage or custom to the contrary notwithstanding; and that in all cases where the whole of such pecuniary penalties or forfeitures shall be recovered to the use of his Majesty, his heirs or successors, it shall be lawful for the said commissioners to cause such reward as they shall think fit, not exceeding one moiety of such penalty or forfeiture so recovered, after deducting all charges and expenses incurred in recovering the same, to be paid thereout to or amongst any person or persons who shall appear to them entitled thereto as informers in respect of such penalties or forfeitures so recovered, anything herein contained to the contrary notwithstanding.

LEGACY DUTY ACT, 1799.

[39 George III, Chapter 73.]

[12th July, 1799.

1. . . . . no legacy consisting of books, prints, pictures, statutes, gems, coins, medals, specimens of natural history, or other specific articles, which shall be given or bequeathed to or in trust for any body corporate, whether aggregate or sole, or to the Society of Serjeants Inn, or any of the Inns of Court or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society or school, and not for the purposes of sale, shall be liable to any duty imposed on legacies by any law now in force.

LEGACY DUTY ACT, 1805.

[45 George III, Chapter 28.]

[5th April, 1805:

5. And the duties hereby granted upon legacies, or charged upon or made payable out of any real estate, or out of any moneys to arise by the sale of any real estate, or upon residues or parts or shares of residues of any such moneys, shall be accounted for, answered, and paid by the trustee or trustees to whom the real estate shall be devised, out of which the legacy or legacies, or share or shares of any money arising out of the sale or mortgage or other disposition of such real estate shall be to be paid or satisfied, or if there shall be no trustees then by the person or persons entitled to such real estate subject to any such legacy, or by the person or persons empowered or required to pay or satisfy any such legacy,

and the said duties shall be retained by the person paying or satisfying any such legacy or share of money, in like manner, and according to such rules and regulations and under and subject to such penalties, as far as the same can be made applicable, as are contained in an Act passed in the thirty-sixth year of the reign of his present Majesty, intituled, " An Act for repealing certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases."

7. All the provisions, clauses, regulations, penalties, forfeitures, matters and things in the said Act contained in relation to legacies out of personal estates or to the collecting any duties thereon, or valuation of any annuities, or periods of paying the duties thereon by instalments or otherwise, shall, so far as the same can be made applicable, and in all cases not expressly provided for by this Act, extend to and be put in force in relation to legacies, annuities and shares of money arising or to arise out of any real estate; and all directions, provisions, forfeitures, and penalties in the said Act contained as to executors and administrators shall be applied to all trustees and owners of any real estates chargeable with legacies, annuities, or shares of money, or out of which, or any money to arise therefrom, against any such legacies, annuities, or shares of money shall be to be satisfied, as fully and amply as if all such provisions, clauses, regulations, penalties, forfeitures, matters, and things had been repeated and re-enacted in this Act in relation to legacies, annuities, and shares of money arising or to arise out of any real estate.

PROBATE AND LEGACY DUTIES ACT, 1808.

[48 George III, Chapter 149.]

[2nd July, 1808.

Section 43 *repealed by Statute Law Revision Act*, 1888.

44. And in all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy or for the residue or any share of the residue of any personal estate which shall have been given by will or other testamentary instrument, or have devolved to any person or persons upon intestacy, shall be brought to the head office to be stamped after the expiration of three calendar months from the date thereof, it shall be lawful for the said commissioners to cause the same to be duly stamped for making the same available, on payment of the duty which shall be payable in respect thereof, together with the penalty incurred in consequence of the same not having been brought to be stamped before the expiration of such three calendar months; and where any such receipt or discharge shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain, it shall be lawful for the said commissioners to remit any penalty that may have been incurred thereon, and to cause the same to be duly stamped on payment of the duty payable in respect thereof; anything contained in any former Act or Acts to the contrary notwithstanding.

STAMP ACT, 1815.

[55 George III, Chapter 184.]

[11th July, 1815.

SCHEDULE PART III.

2. Where the testator, testatrix, or intestate shall have died after the 5th day of April 1805.

	£	s.	d.
For every legacy, specific or pecuniary, or of any other description of the amount or value of £20 or upwards, given by any will or testamentary instrument of any person who shall have died after the 5th day of			

April 1805, either out of his or her personal or moveable estate or out of or charged upon his or her real or heritable estate or out of any moneys to arise by the sale, mortgage, or other disposition of his or her real or heritable estate or any part thereof, and which shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August 1815 :

£ s. d.

Also for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person who shall have died after the 5th day of April 1805 (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy ; where such residue or share of residue shall be of the amount or value of £20 or upwards, and where the same shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August 1815 :

And also for the clear residue (when given to one person) and for every share of the clear residue (when given to two or more persons) of the moneys to arise from the sale, mortgage, or other disposition of any real or heritable estate directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument of any person who shall have died after the 5th day of April 1805 (after deducting debts, funeral expenses, legacies, and other charges first made payable thereout, if any), where such residue, or share of residue shall amount to £20 or upwards, and where the same shall be paid, retained, or discharged after the 31st day of August 1815 :

[1] [Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a child of the deceased, or any descendant of a child of the deceased, or to or for the benefit of the father or mother or any lineal ancestor of the deceased, a duty at and after the rate of one pound per centum on the amount or value thereof - - - - - - - - - - - - - - - - per cent. 1 0 0

Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of the deceased, or any descendant of a brother or sister of the deceased, a duty at and after the rate of three pounds per centum on the amount or value thereof - - - - - - - - - - per cent. 3 0 0

Where any legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased, a duty at and after the rate of five pounds per centum on the amount or value thereof per cent. 5 0 0

Where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased, a duty at and after the rate of six pounds per centum on the amount or value thereof - - - - - - - - - - - - - - per cent. 6 0 0

And where any such legacy or residue or any share of such residue shall have been given or have devolved to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, a duty at and after the rate of ten pounds per centum on the amount or value thereof - - - - - - - - per cent. 10 0 0

[1] The words in square brackets were repealed by The Statute Law Revision Act, 1890, but *see* F.A. 1910, s. 58, restoring this rate.

And all gifts of annuities, or by way of annuity, or of any other partial benefit or interest out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument which shall together be of the amount or value of £20, each shall be charged with duty, though each or either may be separately under that amount or value.

EXEMPTIONS.

Legacies and residues or shares of residue of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the royal family.

And all legacies which were exempted from duty by the Act passed in the 39th year of his Majesty's reign, c. 73, for exempting certain specific legacies given to bodies corporate, or other public bodies, from the payment of duty.

And see also Customs & Inland Revenue Act, 1880, *s.* 13; *Customs & Inland Revenue Act*, 1881, *s.* 42; *F. A.* 1894, *s.* 1; *and F. A.* 1910, *s.* 58.

REVENUE ACT, 1845.

[8 & 9 VICTORIA, CHAPTER 76.]

[4th August, 1845.

4. . . . . every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable or shall have effect or be satisfied out of the personal or moveable estate or effects of such person or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of, or which gift is or shall be payable or shall have effect or be satisfied out of or is or shall be charged or rendered a burden upon the real or heritable estate of such person, or any real or heritable estate, or the rents or profits thereof, which such person hath had or shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise by the sale, burden, mortgage, or other disposition of any such real or heritable estate, or any part thereof, whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a *donation mortis causa*, shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly: Provided always, that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons, shall be liable to the said duties on legacies under the will in which such sum is or shall be appointed or apportioned in exercise of such limited power.

SUCCESSION DUTY ACT, 1853.

[16 & 17 VICTORIA, CHAPTER 51.]

[4th August, 1853,

1. In the construction and for the purposes of this Act,

The term "real property" shall include all freehold, copyhold, customary, leasehold, and other hereditaments, and heritable property, whether corporeal or incorporeal, in *Great Britain* and *Ireland*, except money

secured on heritable property in *Scotland*, and all estates in any such hereditaments :

The term " personal property " shall not include leaseholds, but shall include money payable under any engagement, and money secured on heritable property in *Scotland*, and all other property not comprised in the preceding definition of real property :

The term " property " alone shall include real property and personal property :

The term " succession " shall denote any property chargeable with duty under this Act :

The term " trustee " shall include an executor and administrator, and any person having or taking on himself the administration of property affected by any express or implied trust :

The term " person " shall include a body corporate, company, and society :

The term " Legacy Duty Acts " shall denote the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons.

2. Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a " succession " ; and the term " successor " shall denote the person so entitled ; and the term " predecessor " shall denote the settlor, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

3. Where any persons shall, at or after the time appointed for the commencement of this Act, have any property vested in them jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession ; and every person to whom any such interest shall accrue shall be deemed to be the successor ; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor ; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this Act in proportion to their respective interests in the succession ; and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived.

4. Where any person shall have a general power of appointment, under any disposition of property taking effect upon the death of any person dying after the time appointed for the commencement of this Act, over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed as a succession derived from the donor of the power ; and where any person shall have a limited power of appointment, under a disposition taking effect, upon any such death, over property, any person taking any property by the exercise of such power shall be deemed to take the same as a succession derived from the person creating the power as predecessor.

5. Where any property shall at or after the time appointed for the commencement of this Act be subject to any charge, estate, or interest, determinable by the

death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or persons upon the extinction or determination of such charge, estate, or interest shall be deemed to be a succession accruing to the person, or the persons if more than one, then entitled beneficially to the property or the income thereof, according to his or their respective estates or interest therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged shall be deemed to be the predecessor or predecessors, as the case may be.

6. Provided that no person entitled, at the time appointed for the commencement of this Act, to the immediate reversion in any real property expectant upon the determination of any lease for life or for years determinable on life, shall be chargeable with duty in respect of such determination, in the event of the same occurring in his lifetime.

7. Where any disposition of property, not being a *bonâ fide* sale, and not conferring an interest expectant on death on the person in whose favour the same shall be made, shall be accompanied by the reservation or assurance of or contract for any benefit to the grantor, or any other person, for any term of life or for any period ascertainable only by reference to death, such disposition shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for, on the person in whose favour such disposition shall be made.

8. Where any disposition of property shall be made to take effect at a period ascertainable only by reference to the date of the death of any person dying after the time appointed for the commencement of this Act, such disposition shall be deemed to confer a succession on the person in whose favour the same shall be made; and where any disposition of property shall purport to take effect presently, or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust, or arrangement capable of being enforced in a court of law or equity, the beneficial ownership of such property shall not *bonâ fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as the predecessor; and where any court of competent jurisdiction shall declare any disposition to have been fraudulent and made for the purpose of evading the duty imposed by this Act, it shall be lawful for such court to declare a succession to have been conferred on such person at such time and to such an extent as such court shall think just; and such last-mentioned person shall be deemed to have taken a succession accordingly derived from the person making such disposition as predecessor.

9. The duties hereinafter imposed shall be considered as stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue, hereinafter called "The Commissioners"; who, by themselves and their officers, shall have the same powers and authorities for the collection, recovery, and management thereof, as are by an Act passed in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter one, or by any other Act or Acts, vested in them for the collection, recovery, and management of any stamp duties; and shall provide proper stamps for denoting the rate *per centum* of the duties payable under this Act; and shall have all other powers and authorities requisite for carrying this Act into execution.

10. There shall be levied and paid to her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties; (that is to say,)—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value :

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value :

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value.

And see Customs & Inland Revenue Act, 1888, *s.* 21, *and F. A.* 1910, *s.* 58.

11. Where any person chargeable with duty under this Act in respect of any succession, or chargeable with duty under the Legacy Duty Acts in respect of any legacy bequeathed to him or her by a testator dying after the time appointed for the commencement of this Act, or in respect of the personal estate of any person dying after the same period, shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator, or deceased person, then the person taking such succession, legacy or personal estate shall pay in respect thereof the same rate of duty only as such his or her wife or husband would have been chargeable with if she or he had taken the same.

12. Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the time appointed for the commencement of this Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession, at the same rate as he would have been chargeable with if no such disposition had been made ; but a successor shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of any charge, estate or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto expectantly, on the death of some person dying after the time appointed for the commencement of this Act.

13. Where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable ; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

14. Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other succcessor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession ; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them.

15. Where, at the time appointed for the commencement of that Act, any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time and at the same rate as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where, after the time appointed for the commencement of this Act, any succession shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created; and where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place.

16. Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds *per centum* upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised.

17. No policy of insurance on the life of any person shall create the relation of predecessor and successor between the insurers and the assured or between the insurers and any assignee of the assured, and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made; but any disposition or devolution of the monies payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession.

18. Where the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons shall not amount in money or principal value to the sum of one hundred pounds, no duty shall be payable under this Act in respect thereof or of any portion thereof; and no duty shall be payable under this Act upon any succession, which, as estimated according to the provisions of this Act, shall be of less value than twenty pounds in the whole, or upon any monies applied to the payment of the duty on any succession according to any trust for that purpose, or by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts; and no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act; and no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property.

And see Customs & Inland Revenue Act, 6881, *s.* 10 (2).

19. No legatee or other person shall, after the time appointed for the commencement of this Act, be chargeable under the Legacy Duty Acts with duty, not then already due, in respect of any leasehold hereditaments of any testator or deceased person, as belonging to the personal estate of the testator or deceased.

20. The duty imposed by this Act shall be paid at the time when the successor, or any person in his right or on his behalf, shall become entitled in possession to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate, or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon the determination of such charge, estate, or interest shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination; and except that in case of an annuity, or property hereby made chargeable as an annuity, the duties shall be paid by such instalments as are herein after directed or referred to; provided that no duty shall be payable upon the determination of any lease purporting at the date thereof to be a lease at rackrent, in respect of the increase accruing to the successor upon such determination.

21. The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property, after making such allowances as are herein after directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less period during which he shall be entitled thereto; and every such annuity for the purposes of this Act shall be valued according to the tables in the schedule annexed to this Act; and the duty chargeable thereon shall be paid by eight equal half-yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the seven following instalments at half-yearly intervals of six months each, to be computed from the day on which the first instalment shall have become due, provided that if the successor shall die before all such instalments shall have become due, then any instalments not due at his decease shall cease to be payable, except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

And see Customs & Inland Revenue Act, 1888, *s.* 22, *and F. A.* 1894, *s.* 18.

22. In estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rent charges, and other property yielding or capable of yielding income not of a fluctuating character, an allowance shall be made of all necessary outgoings.

23.[1] [Where timber, trees, or wood, not being coppice of underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net monies, after deducting all necessary outgoings for the year, which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for and pay the same yearly; provided that no duty shall be payable on the net monies received from the sale of timber, trees, or wood in any one year unless such net monies shall exceed the sum of ten pounds; provided, that if the successor shall be desirous of commuting the duty, and shall deliver to the commissioners an estimate of the net monies obtainable by him from the sale of such timber, trees, and wood as may, in a prudent course of management of the

[1] Repealed by F. A. 1910, s. 96 (1), as to persons dying on or after 30th April, 1909.

property, be felled by such successor during his life, the commissioners, if satisfied with such estimate, shall accept the same and assess the duty accordingly.]

24. A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same, or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal.[1]

25. Where a successor, entitled to any real property subject to any lease by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or grassum or other consideration which may be received during his life for the renewal of any such lease, or the grant of any reversionary lease of the same property.

26. The yearly value of any manor, opened mine, or other real property of a fluctuating yearly income shall either be calculated upon the average profits or income derived therefrom, after deducting all necessary outgoings, during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor, before the first payment of duty on the succession shall have become due; or if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest calculated at the rate of three pounds *per centum per annum* on the amount of such principal value.

27. Where any body corporate, company, or society shall become entitled, as successors, to any real property, the duty in respect thereof shall be assessed upon the principal value of such property, but shall be payable by such instalments, at such times, and in such manner as the same would be payable if assessed in respect of property devolving on a successor in fee simple; and it shall be lawful for such body corporate, company, or society, or any trustee thereof, to raise the amount of any duty due in respect of their succession upon the security thereof, at interest, with power for them to give effectual discharges for the money so raised.

28. If a successor, or any person on his behalf, upon becoming entitled to any copyhold or other real property, shall be subject to any fines, casualties of superiority, compositions, reliefs, or charges incident to the tenure thereof, and due in respect of his succession, he shall be entitled to have a deduction allowed to him of the amount of such fines, casualties, compositions, reliefs, or charges from the assessable value of his interest in such copyhold or other real property.

29. The interest of any successor in monies to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such monies shall be subject to any trust for the re-investment thereof in the purchase of other real property, to which the successor would not be absolutely entitled, such monies shall be deemed to be real property, and for the purpose of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or direction for sale, or any property purchased in substitution for it or any intermediate investment of the produce of the sale of the original property.

But see Customs & Inland Revenue Act, 1888, *s.* 21 (2).

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[1] *See* Benefices Act, 1898, s. 1.

30. The interest of any successor in personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase.

31. Where it shall be required to calculate, for the purposes either of this Act or of the Legacy Duty Acts, the value of any annuity, or of any interest chargeable with duty as an annuity, such value shall be calculated according to the tables in the schedule annexed to this Act, and not according to the tables in the schedule annexed to the Legacy Duty Act, 1796, and such annuity or interest shall be chargeable with duty accordingly.

32. The following provisions relating to the assessment and payment of duty on personal estate, and the exemption thereof from duty in certain cases, namely, the eighth, tenth, eleventh, twelfth, fourteenth, and twenty-third Sections of the Legacy Duty Act, 1796, shall be applicable to the personal property comprised in any succession, and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions, and as if the tables in the said Act referred to were the tables in the schedules annexed to this Act.

33. Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

34. In estimating the value of a succession no allowance shall be made in respect of any incumbrance thereon created or incurred by the successor, not made in execution of a prior special power of appointment, but an allowance shall be made in respect of all other incumbrances, and also in respect of any monies which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his succession; provided that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto* of such real property.

35. In estimating the value of a succession no allowance shall be made in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect.

36. In estimating the value of a succession no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

37. Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him ; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the commissioners that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the commissioners shall thereupon refund the same to the person entitled thereto.

38. Where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property.

And see Customs & Inland Revenue Act, 1889, *s.* 10 (1).

39. Where, in the opinion of the commissioners, any succession shall be of such a nature, or so disposed or circumstanced, that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where, from the complication of circumstances affecting the value of a succession or affecting the assessment or recovery of the duty thereon, the commissioners shall think it expedient to exercise this present authority, it shall be lawful for them to compound the duty payable on the succession upon such terms as they shall think fit, and to give discharges to the successor upon payment of duty according to such composition ; and it shall be lawful for them, in any special cases in which they may think it expedient so to do, to enlarge the time for payment of any duty.

And see F. A. 1894, *s.* 13, *and F. A.* 1907, *s.* 13.

40. It shall be lawful for the commissioners to receive any duty tendered to them in advance, and to allow discount thereon at the rate of four pounds *per centum per annum*, or at such other rate as may from time to time be directed by the Treasury ; and no person, by reason of his having made any payment of duty in advance, shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act.

41. It shall be lawful for the commissioners, in their discretion, upon application made by any person who shall be entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid, and for assessing the amount which shall be so payable they shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance ; and upon the receipt of such certain sum they shall give discharges to the successor accordingly.

And see Customs & Inland Revenue Act, 1880, *s.* 11.

42. The duty imposed by this Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed ; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed, while the same shall remain in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor ; and the said duty shall be a debt due to the Crown from the successor, having, in the case of real property comprised in any succession, priority over all charges and

interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession: provided, that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exercisable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all monies arising from the exercise of any such power, and in all investments of such monies.

And see Customs & Inland Revenue Act, 1889, *ss.* 12, 13 *and* 14.

43. The commissioners shall, at the request of any successor, or any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor in any separate properties, or in defined portions of the same property, as shall be reasonably required; and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof; and it shall be lawful also for the commissioners, by their certificates, to be issued in such form as they shall think fit, from time to time to declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged, as to any unpaid instalments, according to any further distribution thereof, upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be thenceforth limited according to such further distribution.

44. The following persons, besides the successor, shall be personally accountable to her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act; that is to say, every trustee, guardian, committee, tutor, or curator, or husband in whom respectively any property, or the management of any property, subject to such duty, shall be vested, and every person in whom the same shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession; and all such trustees, guardians, committees, tutors, curators, husbands, and persons shall be authorised to compound or pay in advance or commute any duty, and retain out of the property subject to any such duty the amount thereof, or to raise such amount, and the expenses incident thereto, at interest on the security of such property, with power to give effectual discharges for the same, and such security shall have priority over any charge or incumbrance created by the successor; and in the event of the non-payment of such duty as aforesaid every person hereby made accountable shall be a debtor to her Majesty in the amount of the unpaid duty for which he shall be so accountable.

And see Customs & Inland Revenue Act, 1889, *ss.* 12, 13, *and* 14.

45. The persons hereby made accountable for the payment of duty in respect of any succession, or some of them, shall, in the case of personal property, at the time of the first payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or for the successor or any person in his right, and in the case of real property when any duty in respect thereof shall first become payable, give notice to the commissioners or to their officers of their liability to such duty, and shall at the same time deliver to the commissioners or to their officers a full and true account of the property for the duty whereon they shall respectively be accountable, and of the value thereof, and of the deductions claimed by them, together with the names of the successor and predecessor, and their

relation to each other, and all such other particulars as shall be necessary or proper for enabling the commissioners fully and correctly to ascertain the duties due; and the commissioners, if satisfied with such account and estimate, as originally delivered, or with any amendments that may be made therein upon their requisition, may assess the succession duty on the footing of such account and estimate; but it shall be lawful for the commissioners, if dissatisfied with such account and estimate, to cause an account and estimate to be taken by any person or persons to be appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal, as hereinafter provided; and if the duty so assessed shall exceed the duty assessable according to the return made to the commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate on the interest of the successor in respect whereof the duty shall be due, in increase of such duty, and to recover the same forthwith accordingly; and if there shall be an appeal against such last-mentioned assessment, then the payment of such expenses shall be in the discretion of the Court of Appeal hereinafter appointed.

And see Customs & Inland Revenue Act, 1889, *s.* 10 (3).

46. If any person required to give any such notice or deliver such account as aforesaid shall wilfully neglect to do so at the prescribed period, he shall be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty payable by him, or in the case of a succession chargeable with a higher rate of duty than one pound *per centum* upon the value thereof, upon such less sum as such duty, if assessable at the rate of one pound *per centum* upon the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue; and if any person liable under this Act to pay any duty shall, after such duty shall have been finally ascertained, wilfully neglect to do so within twenty-one days, he shall also be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty so unpaid, or upon such less sum as such duty, if assessable at the rate of one pound *per centum* on the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue.

Sections 47 *and* 48 *were repealed as to England by the Crown Suits, &c., Act*, 1865, *s.* 53.

49. Every person who under the provisions of this Act may deliver any account or estimate of the property comprised in any succession shall, if required by the commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may be capable of affording any necessary information for the purpose of ascertaining such property and the duty payable thereon, and the commissioners may, without payment of any fee, inspect and take copies of any public book; but all such information shall be deemed to be confidential, and the commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act.

50. It shall be lawful for any accountable party dissatisfied with the assessment of the commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the place in which the appellant shall be resident; and

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every such court, or any judge thereof sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the court, or other person, as such court or judge may think fit[1]: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district, county, or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of her Majesty's Court of Exchequer.

51. Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the commissioners for this purpose, and the Receiver General of Inland Revenue, or other proper officer appointed by the commissioners, shall give a receipt for the same in such form as they shall think fit, and stamped, with the proper stamp for denoting the rate of duty, and the commissioners shall from time to time deliver to any person interested in any property affected by such duty, on applying for the same for any reasonable purpose approved by the commissioners, a certificate, in such form as they may think fit, of such payment.

52. Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof shall exonerate a *bonâ fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or mis-statement in the account upon the footing whereof the same may have been assessed, or any insufficiency of such assessment; and no *bonâ fide* purchaser of property for valuable consideration under a title not appearing to confer a succession shall be subject to any duty with which such property may be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase.

53. Whenever any suit shall be pending in any court for the administration of any property chargeable with duty under this Act or the Legacy Duty Acts, such court shall provide, out of any property which may be in the possession or control of the court, for the payment of duty to the commissioners.

54. This Act shall be taken to have come into operation on the nineteenth day of May one thousand eight hundred and fifty-three, and shall take effect accordingly.

55. This Act may be cited for all purposes as "The Succession Duty Act, 1853."

[1] *And see* Crown Suits, &c., Act, 1865.

THE SCHEDULE TO WHICH THIS ACT REFERS.

TABLE 1.

The Values of an Annuity of £100 per Annum held on a single Life.

Years of Age.	Values.			Years of Age.	Values.		
	£	*s.*	*d.*		£	*s.*	*d.*
Birth	1,892	8	6	48	1,300	9	6
1	1,906	13	0	49	1,271	19	6
2	1,919	2	0	50	1,242	19	6
3	1,926	8	0	51	1,213	17	0
4	1,928	16	0	52	1,185	14	0
5	1,926	19	6	53	1,157	17	6
6	1,921	12	0	54	1,130	13	0
7	1,913	4	6	55	1,103	18	0
8	1,902	16	6	56	1,077	10	0
9	1,890	19	6	57	1,051	10	0
10	1,878	3	0	58	1,025	10	0
11	1,864	7	0	59	999	1	0
12	1,849	12	0	60	972	1	0
13	1,833	18	6	61	943	15	6
14	1,817	7	6	62	914	2	0
15	1,800	8	6	63	883	6	0
16	1,783	13	0	64	852	9	0
17	1,767	16	0	65	821	12	6
18	1,753	5	6	66	790	15	0
19	1,740	11	0	67	761	19	0
20	1,729	9	6	68	733	8	6
21	1,719	17	0	69	705	4	0
22	1,713	1	0	70	677	9	0
23	1,706	16	6	71	650	8	0
24	1,700	11	6	72	623	19	6
25	1,694	0	0	73	597	7	6
26	1,686	14	6	74	569	13	0
27	1,677	5	6	75	541	0	6
28	1,667	1	0	76	511	9	6
29	1,656	1	0	77	477	17	0
30	1,644	7	6	78	444	9	6
31	1,632	0	0	79	412	9	6
32	1,619	0	6	80	381	3	0
33	1,605	4	0	81	350	14	6
34	1,590	9	6	82	321	14	6
35	1,574	17	6	83	292	10	0
36	1,558	9	6	84	263	2	0
37	1,541	10	6	85	234	18	6
38	1,524	0	0	86	207	16	0
39	1,506	1	6	87	184	11	6
40	1,487	10	0	88	164	17	6
41	1,468	4	0	89	148	7	0
42	1,447	11	6	90	133	9	0
43	1,426	2	0	91	122	16	0
44	1,403	10	0	92	107	7	0
45	1,379	14	6	93	93	3	0
46	1,354	16	6	94	79	8	6
47	1,328	2	6	95	64	11	0

TABLE II.

Tables for valuing Annuities held on Joint Lives.

TABLE III.

Table for valuing Annuities for years certain.

THE REVENUE ACT, 1862.

[25 & 26 Victoria, Chapter 22.]

[3rd June, 1862.

39. For the purpose of the stamp duties or probates of wills and letters of administration, debts and sums of money due and owing from persons in the United Kingdom to any deceased person at the time of his death on obligation or other speciality, shall be estate and effects of the deceased, within the jurisdiction of Her Majesty's Court of Probate in England or Ireland, as the case may be, in which the same would be if they were debts owing to the deceased upon simple contract without regard to the place where the obligation or speciality shall be at the time of the death of the deceased.

CROWN SUITS ACT, 1865.

[28 & 29 Victoria, Chapter 104.]

[5th July, 1865.

Provisions for recovery of duty by the Crown.

INLAND REVENUE ACT, 1868.

[31 & 32 Victoria, Chapter 124.]

[31st July, 1868.

9.[1] . . . in any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts now in force, or in respect of any succession under the Succession Duty Act, 1853, is or shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon, [at the rate of four pounds per centum per annum; and such interest shall be recoverable by the commissioners of inland revenue in the same manner as the arrears of duty, and as part thereof.] Provided always, that the acceptance or recovery by the said commissioners of arrears of duty, with interest thereon as aforesaid, shall be an absolute waiver of the penalties (if any) which may have been incurred under the Legacy Duty Acts or the Succession Duty Act.

CUSTOMS AND INLAND REVENUE ACT, 1880.

[43 Victoria, Chapter 14.]

[24th March, 1880.

11. Where any legacy duty or succession duty shall be presumptively payable n respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy, or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid.

[1] The words in square brackets were repealed by F.A. 1896, s. 40, and s. 18 of that Act reduced the rate of interest on all Death Duties to £3 per cent., but by s. 30, F.A. 1919, the rate of interest is again fixed at £4 per cent.

For assessing the amount which shall be so payable the commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance under the Succession Duty Act, 1853.

Upon the receipt of the certain sum the commissioners shall give a discharge for the duty accordingly.

12. When an executor, administrator, or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund.

Such certificate shall not in any way affect the liability of any person other than the person in whose favour it is expressed to be given.

13. Where it appears upon an examination of the account rendered to the Commissioners of Inland Revenue that the value of the whole of the personal estate of any person dying after the passing of this Act does not amount to the sum of one hundred pounds, no legacy duty shall be charged in respect thereof or of any portion thereof.

CUSTOMS AND INLAND REVENUE ACT, 1881.

[44 & 45 Victoria, Chapter 12.]

[3rd June, 1881.

38. (1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or moveable property to be included therein according to the value thereof.

(2) The personal or moveable property to be included in an account shall be property of the following descriptions, viz. :—

(*a*) Any property taken as a *donatio mortis causâ* made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor

or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3) *This sub-section provided for repayment of the Stamp Duty paid on any voluntary settlement coming within Section* 38, *but was repealed by s.* 11 (2) *Customs and Inland Revenue Act,* 1889.

And see Customs and Inland Revenue Act, 1889, *s.* 11, *and F. A.* 1894, *s.* 2 (1) (c), *and F. A.* 1910, *s.* 59.

41. In respect of any legacy, residue, or share of residue payable, out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Stamp Act, 1815, shall not be payable;

And in respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable.

42. Subject to the relief from legacy duty given by section thirteen of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or the intestacy of a person dying on or after the first day of June one thousand eight hundred and eighty-one, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the Stamp Act, 1815, as modified by this Act.

43. It shall be lawful for the Commissioners of Inland Revenue, upon the application of the person acting in the execution of the will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such will.

If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given.

THE REVENUE ACT, 1884.

[47 & 48 Victoria, Chapter 62.]

[14th August, 1884.

1. This Act may be cited as the Revenue Act, 1884.

11. Notwithstanding any provision to the contrary contained in any local or private Act of Parliament, the production of a grant of representation from a court in the United Kingdom by probate or letters of administration or confirmation shall be necessary to establish the right to recover or receive any part of the personal estate and effects of any deceased person situated in the United Kingdom [Provided that where a policy of life assurance has been effected with any insurance company by a person who shall die domiciled elsewhere than in the United Kingdom, the production of a grant of representation from a Court in the United Kingdom shall not be necessary to establish the right to receive the money payable in respect of such policy.][1]

[1] The words in square brackets were substituted for the original proviso by Revenue Act, 1889, s. 19.

CUSTOMS AND INLAND REVENUE ACT, 1888.

[51 & 52 Victoria, Chapter 8.]

[16th May, 1888.

21. (1) In addition to the duties chargeable in respect of successions under section ten of the Succession Duty Act, 1853, there shall be levied and paid to her Majesty in respect of every succession therein referred to, upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, according to the value thereof, the following duties (that is to say) :—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per centum upon the value of the interest of the successor;

In all other cases mentioned in such section, a duty at the rate of one pound ten shillings per centum upon the value of the interest of the successor.

Provided that additional duty under this Act shall not be payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereof duty is payable under the Customs and Inland Revenue Act, 1881.

(2) The duties chargeable under the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons shall not be levied and paid under such Acts in respect of any legacy payable or having effect or being satisfied out of or charged or rendered a burden upon the real or heritable estate of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, or any real or heritable estate, or the rents or profits thereof, which such person shall have had any right or power to charge, burden, or affect with the payment of money, or out of or upon any moneys to arise from the sale, mortgage, or other disposition of any such real or heritable estate, or any part thereof, but the duties under the Succession Duty Act, 1853, and the additional duties under this Act shall be levied and paid in respect of every such legacy (whether given by way of annuity or in any other form) as a succession to personal property.

And see F. A. 1894, *Sections* 1 *&* 5 (2), 1*st Schedule.*

22. (1) The duty chargeable on the interest of a successor in real property, considered as an annuity in conformity with section twenty-one of the Succession Duty Act, 1853, shall, where the successor has become entitled to his succession upon the death of any person dying on or after the first day of July one thousand eight hundred and eighty-eight, be paid as follows :—

(*a*) by eight equal half-yearly instalments, according to the provisions of the said section; or, at the option of the successor.

(*b*) by two equal moieties, whereof the first moiety shall be paid by four equal yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the three following instalments at yearly intervals to be computed from the day on which the first instalment shall have become payable; and the second moiety shall be paid on the day for payment of the last instalment of the first moiety, or, if not so paid, shall be payable by four equal yearly instalments, with interest at the rate of four pounds per centum per annum from such last-mentioned day on so much of the second moiety as shall for the time being remain unpaid, the first of such instalments, with the interest, to be paid at the expiration of twelve months from that day.

(2) In the event of a successor availing himself of the option given to him by this section, he shall be entitled to tender the duty in advance, and receive discount thereon at such rate and subject to such regulations in all respects as the Treasury may prescribe.

(3) In the event of the successor availing himself of the option given to him by this section, and dying before all the duty with the interest (if any) shall have been fully paid, then the unpaid part of the duty with the interest (if any) shall—

(*a*) where the successor shall have been competent to dispose by will of a continuing interest in such property, be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest; and

(*b*) where the successor shall not have been so competent, be a debt due to her Majesty, and payable out of his estate, either in advance under the provision in this section in that behalf, or at the same time or times and in the same manner as the amount unpaid would have been payable by him if he had not died; provided that if the death of the successor shall have happened before the day for payment of the last instalment of the first moiety of duty, the debt shall be reduced by so much as would have ceased to be payable if the duty had been payable by eight half-yearly instalments under section twenty-one of the Succession Duty Act, 1853.

CUSTOMS AND INLAND REVENUE ACT, 1889.

[52 & 53 Victoria, Chapter 7.]

[31st May, 1889.

Sections 5 *to* 9 *inclusive imposed a temporary Estate Duty at* 1 *per cent. on property exceeding* £10,000 *; as to which see F. A.* 1894, *Section* 1 (*First Schedule*).

Amendments of Law as to Succession Duties and Duties on Accounts.

10. (1) The allowance under section thirty-eight of the Succession Duty Act, 1853, to a successor upon taking a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, shall only be made in respect of the value of property which the successor may have acquired by any title not conferring a succession on him, and which passes from the successor to some other person.

(2) Subject to the relief given by section eighteen of the Succession Duty Act, 1853, in respect of property not amounting in money or principal value to the sum of one hundred pounds, the duties charged under the said Act, and section twenty-one of the Customs and Inland Revenue Act, 1888, shall be payable upon a succession upon the death of any person dying on or after the first day of June one thousand eight hundred and eighty-nine, although the value thereof shall be less than twenty pounds.

(3) The Commissioners of Inland Revenue, if dissatisfied with the account and estimate originally delivered in conformity with section forty-five of the Succession Duty Act, 1853, may, subject to appeal as therein provided assess the duty on the footing of such account and upon such estimate as they may place hereon, or proceed according to the directions of that section.

11. (1) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows:—

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bonâ fide* possession

and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other "person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

And see F. A. 1894, *s.* 2 (1) (*c*), *and F. A.* 1910, *s.* 59.

(2) A return of stamp duty shall not be made under sub-section three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.[1]

12. (1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor

[1] Sections 12-14 were applied to Estate Duty by F.A. 1894, s. 8 (2).

remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

13. (1) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

15. Every notice referred to in this part of this Act shall be in writing and in such form as the Commissioners of Inland Revenue shall prescribe, and shall be delivered or sent in duplicate, and an acknowledgment of the receipt thereof, by or on behalf of the Commissioners, upon the duplicate shall be forthwith returned to the person by whom the notice was delivered or sent.

INLAND REVENUE REGULATION ACT, 1890.

[53 & 54 Victoria, Chapter 21.]

[25th July, 1890.

This Act, as amended by the Public Accounts and Charges Act, 1891, 54 & 55 *Vict.*, c. 24, *provided for recovery of duty.*

STAMP DUTIES MANAGEMENT ACT, 1891.

[54 & 55 Victoria, Chapter 38.]

[21st July, 1891.

Section 2 *provides for recovery of duty improperly withheld.*

FINANCE ACT, 1894.

[57 & 58 Victoria, Chapter 30.]

[31st July, 1894.

PART I.

Estate Duty.

Grant of Estate Duty.

1. In the case of every person dying after the commencement of this part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate duty.

2. (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased, to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

And see F. A. 1910, *s.* 59.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom[1] shall be included only, if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.[2]

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.[3]

3. (1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any

[1] For adaptation of the expression "the United Kingdom" resulting on the Government of Ireland Act, 1920, and the Irish Free State (Consequential Provisions) Act, 1922, see (i) Art. 14, (3) of the Government of Ireland (Adaptation of the Taxing Acts) Order, 1922 (S.R. & O., 1922, No. 80): and (ii) Art. 2 of the Irish Free State (Consequential Adaptation of Enactments) Order (S.R. & O., 1923, No. 405).

[2] *See* F. A. 1923, s. 37.

[3] *See* F. A 1910, s. 59.

annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate duty.

4.[1] For determining the rate of Estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Provided that any property so passing, in which the deceased never had an interest, [or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased,] shall not be aggregated with any other property but shall be an estate by itself, and the Estate duty shall be levied at the proper graduated rate on the principal value thereof ; [but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate duty.]

And see F. A. 1900, *s.* 12, *and F. A.* 1907, *s.* 16.

5.[2] [(1) Where property in respect of which Estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property :—

(*a*) a further Estate duty (called settlement Estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased ; but

(*b*) during the continuance of the settlement the settlement Estate duty shall not be payable more than once.]

(2) If Estate duty has already been paid in respect of any settled property since the date of the settlement, the Estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

And see F. A. 1910, *s.* 55, *and F. A.* 1914, *s.* 14.

(3) In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

[(4) Any person paying the settlement Estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the *ad valorem* stamp duty (if any) charged on the settlement in respect of that property.]

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[1] The words in square brackets were repealed by F.A. 1900, s. 18, as to persons dying on or after 9th April, 1900.

[2] *See* F.A. 1898, s. 13, for the words added to sub-s. 2), but by F.A. 1914, ss. 14 and 18 (1), sub-ss. (1) and (4) were wholly repealed.

(5) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of Estate duty, in like manner as for the purpose of succession duty.

And see F. A. 1922, *s.* 44.

Collection and Recovery of Duty and Value of Property.

6. (1) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

(2) The executor of the deceased shall pay the Estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest [at the rate of three per cent. per annum][1] on the Estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, [and shall form part of the Estate Duty.][1]

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, [less income tax,][1] and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7. (1) In determining the value of an estate for the purpose of Estate Duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances

[1] The words in square brackets were repealed by F.A. 1896, s. 4. Under F.A. 1919, s. 30 the rate of interest is now £4 per cent.

were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

Extended by F. A. 1910, *s.* 57.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom[1] (unless contracted to be paid in the United Kingdom,[1] or charged on property situate within the United Kingdom[1]), except out of the value of any personal property of the deceased situate out of the United Kingdom[1] in respect of which Estate Duty is paid; and there shall be no repayment of Estate Duty in respect of any such debts, except to the extent which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom,[1] they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

And see F. A. 1910, *s.* 60 (2), *and F. A.* 1911, *s.* 18.

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

And see F. A. 1910, *Sections* 60 (1) *and* 61 (1).

(6) Where an estate includes an interest in expectancy, Estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of Estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of Estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

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[1] *See* footnote to F. A. 1894, s. 2 (2).

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate duty in respect thereof be more than once levied on the same death.

8. (1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate duty, and for the exemption of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate duty were therein mentioned as well as Succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate duty is payable upon the death of the deceased, and shall be accountable for the Estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5) Every person accountable for Estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of

the estate in respect of which duty is leviable on the death of deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate duty is leviable on the death of the deceased.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the Estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10) [Interest on arrears of Estate duty shall be paid as if they were arrears of legacy duty.][1]

(11) If after the expiration of twenty years from a death upon which Estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

And see F. A. 1907, *s.* 13.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over valuation by the Commissioners, with interest at three per cent. per annum.[2]

(13) Where any proceeding for the recovery of Estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath[3] and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

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1 The words in square brackets were repealed by F.A. 1896, s. 40.
2 Now 4 per cent., F.A. 1919, s. 30.
3 *But see* F.A. 1900, s. 13 (2).

(16) The Estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

9. (1) A rateable part of the Estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate duty, the Commissioners shall grant a certificate of the Estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3) Subject to any repayment of Estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4) If the rateable part of the Estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5) A person authorised or required to pay the Estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6) A person having a limited interest in any property, who pays the Estate duty in respect of that property, shall be entitled to the like charge, as if the Estate duty in respect of that property had been raised by means of a mortgage to him.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate duty in respect of property comprised in the settlement and held upon the same trusts.

10. (1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property [1] or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

[1] Where the value of real or leasehold property is involved, the appeal should now be made under Part I, F. A. 1910, ss. 60 (3), 33 34 and 42.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purposes of the appeal apply as if such county court were the High Court.

See F. A. 1896, *s.* 22, *for the words added to this sub-section.*

(6) The county council of every county or county borough in Great Britain, shall, within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate ; and the costs of any such arbitration shall be part of the costs of the appeal.

But see now F. A. 1910, *s.* 60 (3), *as to appeals relating to the value of real and leasehold property.*

Discharge from and Apportionment of Duty.

11. (1) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the persons accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2) Where a person accountable for the Estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate duty, and the Commissioners shall give a certificate of such discharge.

And see F. A. 1907, *s.* 14.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof

were added to the value of the property in respect of which duty has been already accounted for :

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.[1]; and on the receipt of such sum they shall give a certificate of discharge accordingly.

13. (1) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interests, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly :

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3) In this section the expression "death duties" means the Estate duty under this Act, the duties mentioned in the First Schedule to this Act and the legacy and succession duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

14. (1) In the case of property which does not pass to the executor as such an amount equal to the proper rateable part of the Estate duty may be recovered by the person, who being authorised or required to pay the Estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of Estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of Estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15. (1) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by

[1] Now 4 per cent., F.A. 1919, s. 30

himself alone or in concert or arrangement with any other person, for the life of himself and of such other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

(2) It shall be lawful for the Treasury to remit the Estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purposes of fixing the rate of Estate duty.

(3) Estate duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4) Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853.

Small Estates.

16. (1) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

And see F. A. 1910, *s.* 61 (2) and Revenue Act, 1903.

(2) All such property may be comprised in the notice under the said section thirty-three.

(3) Where the net value of the property, real and personal, in respect of which Estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of Estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or Estate duty has been paid upon the principal value of that estate, the settlement Estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

Rates of Estate Duty.

17.[1] The rates of Estate duty shall be according to the following scale :—

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
,,	500	,,	,,		1,000	Two pounds.
,,	1,000	,,	,,		10,000	Three pounds.
,,	10,000	,,	,,		25,000	Four pounds.
,,	25,000	,,	,,		50,000	Four pounds ten shillings.
,,	50,000	,,	,,		75,000	Five pounds.
,,	75,000	,,	,,		100,000	Five pounds ten shillings.
,,	100,000	,,	,,		150,000	Six pounds.
,,	150,000	,,	,,		250,000	Six pounds ten shillings.
,,	250,000	,,	,,		500,000	Seven pounds.
,,	500,000	,,	,,		1,000,000	Seven pounds ten shillings.
,,	1,000,000	-	-	-	-	Eight pounds.

[The rate of the settlement Estate duty where the property is settled shall be one per cent.]

[Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the Estate duty and the settlement Estate duty shall be payable at the rate per cent. for the full sum of ten pounds.]

Succession Duty.

18. (1) The value for the purpose of Succession duty of a succession to real property arising[2] on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the Estate duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same ; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorised by this Act for Estate duty on real property, with interest at the rate of three per cent. per annum[3] ; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof ; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

(2) The principal value of real property for the purpose of Succession duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of Estate duty ; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of Succession duty shall be arrived at in the same manner as under the provisions of this Part of this Act for the purpose of Estate duty.

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1 These rates of Estates Duty were repealed by F. A. 1907, s. 30, as to persons dying on or after 19th April, 1907. The proviso was repealed by F. A. 1896, s. 40. The rate of Settlement Estate Duty was increased by F. A. 1910, s. 54, to £2 per cent. as to persons dying on or after 30th April, 1909, but by F. A. 1914, s. 14, Settlement Estate Duty was abolished in the case of persons dying after 11th May, 1914.

2 As to meaning, *see* F .A. 1925, s. 24.

3 Now 4 per cent. F.A. 1919, s. 30.

Local Taxation Grant.[1]

19. In substitution for the grant out of the Probate duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the Estate duty derived from personal property, such sum as the Commissioners in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which Estate duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first mentioned Acts shall apply, as if the sum so determined were the Probate duty grant or one-half of the proceeds of the sums collected in respect of the Probate duties (as the case requires) within the meaning of those Acts.

British Possessions.

20. (1) Where the Commissioners are satisfied, that in a British possession to which this section applies,[2] duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate duty payable in respect of that property on the same death.

(2) Nothing in this Act shall be held to create a charge for Estate duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate duty.

(3) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

Savings and Definitions.

21.[3] (1) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

Amended by F. A. 1910, *s.* 55, *but see F. A.* 1914, *s.* 14.

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3) Where an interest in expectancy in any property has, before the commencement of this part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any

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[1] The payment directed to be made by s. 19 is by F. A. 1907, s. 17, to be made out of the Consolidated Fund.

[2] *See* page 110 for a list of such possessions, and F.A. 1922, s. 45.

[3] Sub-section 1 is amended by F.A. 1910, s. 55, and F.A. 1914, s. 14. Sub-section 4 is repealed by F. A. 1914, s. 18 (1).

higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4) [The settlement Estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.]

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate duty shall not be payable in respect of that property until the death of the survivor.

22. (1) In this Part of this Act, unless the context otherwise requires :—

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act :

(*b*) The expression "will" includes any testamentary instrument :

(*c*) The expression "representation" means probate of a will or letters of administration :

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person :

(*e*) The expression "Estate duty" means Estate duty under this Act :

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :

(*g*) The expression "agricultural property" [1] means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property :

(*h*) The expression "settled property" means property comprised in a settlement :

(*i*) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust :

(*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases :

(*k*) The expression "incumbrances" includes mortgages and terminable charges :

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death" :

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue :

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto :

(*o*) The expression "prescribed" means prescribed by the Commissioners.

[1] *See* F. A. 1925, s. 23.

(2) For the purposes of this Part of this Act—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exerciseable by instrument *inter vivos* or by will, or both, but exclusive of any power exerciseable in a fiduciary capacity under a disposition not made by himself, or exerciseable as tenant for life under the Settled Land Act, 1882, or as mortgagee:

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1) The Court of Session shall be substituted for the High Court:

(2) "Sheriff court" shall be substituted for "county court":

(3) "Confirmation" shall be substituted for "representation":

(4) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property:

(5) The expression "Inland Revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory:

(6) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Probate and Legacy Duties Act, 1808;

(7) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence[1]:

(8) The expression "personal property" means moveable property:

(9) The expression "real property" includes heritable property:

(10) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage:

(11) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person:

(12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act:

(13) The expression "trustee" includes a tutor, curator, and judicial factor:

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[1] *See* Executors (Scotland) Act, 1900, s. 9.

(14) The expression "settled property" shall not include property held under entail:

(15) An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this Act to be a person competent to dispose of such estate:

And see F. A. 1896, *s.* 23, *for words added.*

(16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement Estate duty as well as Estate duty shall be paid in respect of such estate but neither Estate duty nor settlement Estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies:

And see F. A. 1914, *s.* 14.

(17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate duty paid by him as aforesaid:

(18) Where any person who pays Estate duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

(*a*) for an order of sale of the property or part of it, and in the event of the court granting such order, it shall provide for the payment out of the price of the amount of the Estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the court shall seem proper; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested; or

(*b*) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the court shall grant authority

to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate duty;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (*a*) and (*b*) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty:

(19) This part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or curtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

PART VI.

Short Title.

42. This Act may be cited as the Finance Act, 1894.

FIRST SCHEDULE.

Existing Duties referred to.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the persons applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered.

3. The additional succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888.

4. The temporary estate duties imposed by sections 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to legacy duty or succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively Estate duty has been paid, or under any other disposition under which Estate duty has been paid.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184 -	The Stamp Act, 1815 - -	Section thirty-eight.
56 Geo. 3, c. 56 -	The Probate Duty (Ireland) Act, 1816.	Section one hundred and seventeen.
43 Vict., c. 14 - -	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict., c. 12 -	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

FINANCE ACT, 1896.

[59 & 60 VICTORIA, CHAPTER 28.]

[7th August, 1896.

PART IV.

DEATH DUTIES.

Estate Duty.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15. (1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the

purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16. The estate duty due in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (*d*) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

17.[1] [Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds :—

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.]

18. (1) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment of the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.[2]

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19. (1) The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The settlement estate duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

But see now F. A. 1914, *s.* 14.

20.[3] (1) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, [and is settled so as to be enjoyed in kind in succession by different persons,] such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind [by a person not competent to dispose of the same,] be exempt from estate duty, but if it is sold [or is in the possession of some person who is then competent to dispose of the same,] shall become liable to estate duty.

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[1] Repealed by F.A. 1900, s. 18, as to persons dying on or after 9th April, 1900.

[2] F.A. 1919, s. 30, substitutes 4 per cent. for 3 per cent. in the case of interest accruing due after 31st July 1919.

[3] The words in square brackets were repealed by F.A. 1910, s. 96 (1), except as respects persons dying before 30th April, 1909.

(2) The person selling the same, or for whose benefit the same is sold, [and also the person being in possession and competent to dispose of the same] shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, [and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose].

See F.A. 1910, *s.* 63, *and F.A.* 1921, *s.* 44.

21. Where on the death of a deceased person estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the estate duty to the extent to which it has been paid or is payable in respect of the property on which estate duty is payable.

And see F.A. 1907, *s.* 15.

22. There shall be added to sub-section five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

23. The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir or entail, or having the consent of any subsequent heir valued and dispensed with.

24. (1) Unless the context otherwise requires—

(*a*) this Part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(*b*) the expression "deceased person" means a person dying after the commencement of this Part of this Act.

(2) Part I of the Finance Act, 1894, is in this Act referred to as "the principal Act."

39. . . . Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

40.[1] The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

41. This Act may be cited as the Finance Act, 1896.

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[1] Section 40 and the Schedule were taken off the Statute Book by the Statute Law Revision Act, 1908, subject, however, to a proviso under which the repeal effected by s. 40 was not affected.

SCHEDULE.[1]

Part III.

Death Duties.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict., c. 124 -	The Inland Revenue Act, 1868.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict., c. 30 -	The Finance Act, 1894 -	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the estate duty," and in sub-section eight, the words "less income tax." Section eight, sub-section ten. Section seventeen, from "provided that," to the end of the section.

FINANCE ACT, 1898.

[61 & 62 Victoria, Chapter 10.]

PART V. [1st July, 1898.

Estate Duties.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof "and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property.

14. Where in the case of a death occurring after the commencement of this Act settlement estate duty is paid in respect of any property contingently settled and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

But see F. A. 1914, *s.* 14.

17. This Act may be cited as the Finance Act, 1898.

[1] *See* footnote to s. 40.

FINANCE ACT, 1900.

[63 & 64 Victoria, Chapter 7.]

PART III. [9th April, 1900.

Death Duties.

11. (1) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purposes of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was bonâ fide made or effected twelve months before the death of the deceased, and bonâ fide possession and enjoyment of the property was assumed thereunder immediately upon the surrender assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

(2) This section shall inter alia apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination.

And see F. A. 1910, *s.* 59, *and F. A.* 1914, *s.* 14 (*c*).

12. (1) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I of the Finance Act, 1894) in any property has before the passing of this Act been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to Estate duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.

But see F. A. 1907, *s.* 16.

13. (1) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

14. (1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if the total value for the purpose of estate duty of the property so passing does not exceed five thousand pounds.

(2) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

And see the Death Duties (Killed in War) Act, 1914, *as extended*, *F. A.* 1919. *s.* 31, *F. A.* 1921, *s.* 43, *and F. A.* 1924, *s.* 38.

PART VI.

General.

18.[1] The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

19. This Act may be cited as the Finance Act, 1900.

SECOND SCHEDULE.[1]

REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict., c. 30 -	The Finance Act, 1894 -	Section four, from "or which under a disposition" to "descendant of the deceased" and from "but if any benefit" to the end of the section, as respects persons dying after the passing of this Act.
59 & 60 Vict., c. 28 -	The Finance Act, 1896 -	Section seventeen as respects persons dying after the passing of this Act.

1 Section 18 and the Schedule were taken off the Statute Book by The Statute Law Revision Act, 1908, subject, however, to a proviso under which the repeal effected by Section 18 was not affected.

REVENUE ACT, 1903.

[3 Edward 7, Chapter 46.]

[14th August, 1903.

PART IV.

Miscellaneous.

14. Where, in the case of a person dying after the commencement of this Act, the fixed duty of thirty shillings or fifty shillings has been deposited or paid under section sixteen of the Finance Act, 1894 (which relates to the estate duty on small estates), and it is afterwards found that the gross value of the property on which estate duty is payable exceeds three hundred or five hundred pounds, as the case may be, the Commissioners of Inland Revenue, if they are satisfied that there were reasonable grounds for the original estimate of the value of the property, may (notwithstanding anything in section thirty-five of the Customs and Inland Revenue Act, 1881) allow an amount equal to the fixed duty deposited or paid to be deducted from the estate duty payable in respect of the property.

17. (2) This Act shall come into operation on the first day of September nineteen hundred and three, and may be cited as the Revenue Act, 1903.

FINANCE ACT, 1907.

[7 Edward 7 Chapter 13.]

[9th August, 1907.

PART III.

Death Duties.

12. [The scale set out in the First Schedule to this Act shall, in the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, be substituted for the scale of rates of estate duty set out in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act) :

Provided that where an interest in expectancy (within the meaning of Part I of the principal Act) in any property has before the nineteenth day of April nineteen hundred and seven been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed ; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

Repealed by F. A. 1910, *s.* 96 (1), *except as to persons dying before 30th April*, 1909. *See substituted scale in Second Schedule to that Act.*

13. The power of the Commissioners under sub-section (11) of section eight of the principal Act to remit the payment of estate duty or interest thereon shall apply to the other duties which are included in the definition of death duties in sub-section (3) of section thirteen of that Act as well as to estate duty.

14. The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for estate duty), at whatever time the application is made ; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

15. The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which estate duty is payable shall. instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were

calculated on the value of the property on which estate duty is payable : Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

16. In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under sub-section (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purpose of the principal Act, instead of being so aggregated, be treated as an estate by itself.

PART VII.

General.

30.[1] (1) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part III of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1907.

FIRST SCHEDULE.[2]

SCALES OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	One pound.
,,	500	,,	,,	1,000	Two pounds.
,,	1,000	,,	,,	10,000	Three pounds.
,,	10,000	,,	,,	25,000	Four pounds.
,,	25,000	,,	,,	50,000	Four pounds ten shillings.
,,	50,000	,,	,,	75,000	Five pounds.
,,	75,000	,,	,,	100,000	Five pounds ten shillings.
,,	100,000	,,	,,	150,000	Six pounds.
,,	150,000	,,	,,	250,000	Seven pounds.
,,	250,000	,,	,,	500,000	Eight pounds.
,,	500,000	,,	,,	750,000	Nine pounds.
,,	750,000	,,	,,	1,000,000	Ten pounds.
,,	1,000,000	,,	,,	1,500,000	Ten pounds on one million, and eleven pounds on the remainder.
,,	1,500,000	,,	,,	2,000,000	Ten pounds on one million and twelve pounds on the remainder.
,,	2,000,000	,,	,,	2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
,,	2,500,000	,,	,,	3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
,,	3,000,000	-	-	-	Ten pounds on one million, and fifteen pounds on the remainder.

[1] Repealed *inter alia* F.A. 1894, s. 17, except as to persons dying before 19th April, 1907.

[2] Repealed by F. A. 1910, s. 96 (1), as to persons dying on or after 30th April, 1910.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

[8 EDWARD 7, CHAPTER 69.]

[21st December, 1908.

34 & 35. *Empower a Company whose objects comprise the transaction of business in a Colony to keep a Colonial register of members resident in that Colony.*

36. (*b*) On the death of a member registered in a Colonial register, the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

295. This Act may be cited as The Companies (Consolidation) Act, 1908.

296. This Act shall come into operation on the first day of April, 1909.

FINANCE (1909-10) ACT, 1910.

[10 EDWARD 7, 1 GEORGE 5, CHAPTER 8.]

[29th April, 1910.

Appeals.[1]

33. (1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(*a*) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and

(*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act and shall not be questioned in any case on an appeal against an assessment of duty.

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the

[1] *See* s. 60 (3), *infra*.

Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any duty claimed); and sub-sections two, three, and four of section ten of the Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party[1] shall have a right of appeal to the Court of Appeal.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

34. (1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires,—

(1) "Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be

[1] Including the Commissioners of Inland Revenue, Revenue Act, 1911, s. 7.

substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such Judges shall be to the House of Lords, and in sub-sections (2), (3) and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal, the said judges shall be substituted for the High Court. "Sheriff Court" shall be substituted for "County Court" and there shall be an appeal from the Sheriff Court to the said judges, whose decision in such case shall be final.

(2) Any order of a referee as to expenses shall be enforceable as a recorded decree abitral.

PART III.

Death Duties.

54.[1] [The scale set out in the Second Schedule to this Act shall, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, be substituted for the scale set out in the First Schedule to the Finance Act, 1907, as the scale of rates of estate duty, and two per cent. shall be substituted for one per cent. in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of settlement estate duty.]

55. For the purpose of any claim to relief from estate duty under sub-section (2) of section five or sub-section (1) of section twenty-one of the principal Act, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

But see now F. A. 1914, *s.* 14.

56. (1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property, accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act[2] in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(*a*) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

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[1] Repealed as to persons dying after 15th August, 1914, by F.A. 1914, s. 18 (1).

[2] *See* F.A., 1894, s. 22 (1) (*j*).

(*b*) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

58. (1) Any legacy or succession duty which under the Stamp Act, 1815, or the Succession Duty Act, 1853, or any other Act, is payable at the rate of three per cent. shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession.

(2) The legacy and succession duty payable at the rate of one per cent. on the amount or value of any legacy or succession under the Stamp Act, 1815, and the Succession Duty Act, 1853, or any other Act, shall be levied and paid notwithstanding any repeal effected by or anything contained in the principal Act (except sub-section (3) of section sixteen thereof) or any other Act, and the duty shall also be levied and paid in cases where the person taking the legacy or succession is the husband or wife of the testator, intestate, or predecessor as in cases where the person taking the legacy or succession is a lineal ancestor or descendant of the testator, intestate, or predecessor:

Provided that the duty shall not be levied—

(*a*) Where the principal value of the property passing on the death of the deceased in respect of which estate duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed fifteen thousand pounds, whatever may be the value of the legacy or succession; or

(*b*) Where the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed one thousand pounds, whatever may be the principal value of such property; or

(*c*) Where the person taking the legacy or succession is the widow or a child under the age of twenty-one years of the testator, intestate, or predecessor, and the amount or value of the legacy or succession together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed two thousand pounds, whatever may be the principal value of such property.

(3) In this section, the expression "deceased" means, in the case of a legacy, the testator (including a person making a donation mortis causâ) or intestate, and, in the case of a succession arising[1] through devolution by law, the person on whose death the succession arises, and, in the case of a succession arising[1] under a disposition, the person on whose death the first succession thereunder arises; and the expression "legacy" includes residue and share of residue.

(4) This section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given or the intestate on whose death the legacy duty is payable, dies on or after the thirtieth day of April nineteen hundred and nine, and, in the case of a succession arising through devolution by law, only where the succession arises on or after that date, and, in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date.

[1] *See* F. A. 1925, s. 24.

59. (1) In the case of a person dying on or after the thirtieth day of April nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, or a surrender, assurance, divesting, or disposition must have been made or effected, in order that the property taken under the disposition, or affected by the surrender, assurance, divesting, or disposition, may not be included as property passing on the death of the deceased, shall be three years instead of twelve months before the death, and accordingly paragraph (*a*) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act, 1889, and applied by paragraph (*c*) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, and section eleven of the Finance Act, 1900, shall be read as if three years were substituted for twelve months :

Provided that this section shall not apply to any gift inter vivos, surrender, assurance, divesting, or disposition made or effected before the thirtieth day of April nineteen hundred and eight, or made or effected for public or charitable purposes.

(2) So much of paragraph (*c*) of sub-section (1) of section two of the principal Act and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased, shall not apply to gifts which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3) Where property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, surrender, assurance, or divesting, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section.

And see F. A. 1914, *s.* 14, *proviso* (*c*).

60. (1) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I

of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.

61. (1) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, including any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

(2) Where it is claimed that a fixed duty is payable in respect of any property under sub-section (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be, and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed for the purpose of paying purchase money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of estate duty by instalments).

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the estate duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5)[1] [Where an estate, in respect of which estate duty is payable on the death of a person dying after the passing of this Act, comprises land on which timber, trees, or wood are growing, the value of such timber, trees, or wood shall be aggregated with the other property passing on the death of the deceased for the purpose of determining the value of the estate and the rate of estate duty, but the estate duty which, but for this sub-section, would be payable on the principal value of the timber, trees, or wood shall not be payable thereon, but shall, at the rate so ascertained, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of the timber, trees, or wood, when felled, during the period which may elapse until the land on the death of some other person again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received :]

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of estate duty on the principal value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of estate duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable.

This sub-section shall apply to succession duty payable in respect of woodlands in like manner as it applies to estate duty, except that nothing in this sub-section shall affect the rate of succession duty.

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[1] The words in square brackets were repealed by F. A. 1912, s. 9.

62. Where increment value duty[1] is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under sub-section (1) of section seven of the principal Act, for the amount of increment value duty so to be collected as if it were a debt.

63. In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, section twenty of the Finance Act, 1896 (which gives an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption from legacy and succession duty as well as from estate duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold,[2] and then only in respect of the last death on which the property passed.

64. Where an interest in expectancy within the meaning of Part I of the principal Act in any property has, before the thirtieth day of April nineteen hundred and nine, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

95. (1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated.

(3) The liability of any person to pay any sum on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

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[1] Imposed by s. 1 of this Act. [2] *See* F.A. 1921, s. 44, as to exempted purchasers.

96. (1) The Acts specified in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the Third column of that Schedule.

(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

SECOND SCHEDULE.[1]

Scale of Rates of Estate Duty.

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£		£		
Exceeds	100	and does not exceed	500	-	1
,,	500	,, ,,	1,000	-	2
,,	1,000	,, ,,	5,000	-	3
,,	5,000	,, ,,	10,000	-	4
,,	10,000	,, ,,	20,000	-	5
,,	20,000	,, ,,	40,000	-	6
,,	40,000	,, ,,	70,000	-	7
,,	70,000	,, ,,	100,000	-	8
,,	100,000	,, ,,	150,000	-	9
,,	150,000	,, ,,	200,000	-	10
,,	200,000	,, ,,	400,000	-	11
,,	400,000	,, ,,	600,000	-	12
,,	600,000	,, ,,	800,000	-	13
,,	800,000	,, ,,	1,000,000	-	14
,,	1,000,000	- - - - - -		-	15

[1] Repealed as to persons dying after 15th August, 1914, by F. A. 1914, s. 18 (1). See substituted scale in Schedule to that Act.

SIXTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. 3, c. 52 -	The Legacy Duty Act, 1796	In section fourteen, so far as it applies to objects which appear to the Treasury to be of national, scientific, historic, or artistic interest, the words from "and given to" to "persons in succession"; the word "so," where it secondly occurs; the words from "not having any power" to "property yielding an income"; the words from "or shall come" to "having an absolute interest therein"; the word "same," where it fifthly occurs; the words from "as if the same had been" to "or dispose thereof"; and the words from "or who shall have" to "an absolute interest therein".
16 & 17 Vict., c. 51 -	The Succession Duty Act, 1853	Section twenty-three, except as respects persons dying before the passing of this Act.
59 & 60 Vict., c. 28 -	The Finance Act, 1896	In section twenty, the words from "and is settled" to "by different persons"; the words "by a person not competent to dispose of the same"; the words "or is in the possession of some person who is then competent to dispose of the same"; the words "and also the person being in possession and competent to dispose of the same": and the words from "and in the case," to the end of the section, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.
7 Edw. 7, c. 13 -	The Finance Act, 1907	In section two, the word "tobacco"; and section twelve, and the First Schedule, except as respects persons dying before the thirtieth day of April nineteen hundred and nine.

FINANCE ACT, 1911.

[1 & 2 GEORGE 5, CHAPTER 48.]

[16th December, 1911.

PART V.

Death Duties.

18. It is hereby declared that, in estimating for the purposes of sub-section (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

19.[1] [Sub-section (5) of Section sixty-one of the Finance (1909-10) Act, 1910 (which relates to duty in respect of timber, trees, or wood), shall have effect and shall be deemed always to have had effect as if the words "on or after the thirtieth day of April nineteen hundred and nine" were substituted for the words "after the passing of this Act."]

FINANCE ACT, 1912.

[2 & 3 GEORGE 5, CHAPTER 8.]

[7th August, 1912.

9. Where an estate, in respect of which estate duty is payable on the death of a person dying on or after the thirtieth day of April nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of estate duty, and estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section (5) of section 61 of the Finance (1909-10) Act, 1910, and that paragraph and section nineteen of the Finance Act, 1911, are hereby repealed.

FINANCE ACT, 1914.

[4 & 5 GEORGE 5, CHAPTER 10.]

[31st July, 1914.

PART III.

Death Duties.

12.[2] The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of estate duty set out in the Second Schedule to the Finance (1909-10) Act, 1910, as the scale of rates of estate duty.

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[1] Repealed by F. A. 1912, s. 9.

[2] New scale substituted as to persons dying after 30th July 1919, by F. A. 1919, s. 29.

13. (1) The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

(2) Where the net value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds one thousand pounds, the amount of legacy and succession duty payable in respect of the property shall not exceed the amount by which the net value of the property as estimated for the purposes of estate duty exceeds one thousand pounds.

14. Any relief from the payment of estate duty given by sub-section (2) of section five, or by sub-section (1) of section twenty-one of the Finance Act, 1894 (which relate to settled property), or by sub-section (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and settlement estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen :

Provided that—

(*a*) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, estate duty has been paid or any of the duties specified in sub-section (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of estate duty on the death of the other party to the marriage ; and

(*b*) on the first occasion on which estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of settlement estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of settlement estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and fourteen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income ; and

(*c*) Section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909-10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any estate duty payable on the death of that person which would not have been payable but for this section.

15. Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business,

passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent. ;

Where the second death occurs within two years of the first death, by forty per cent. ;

Where the second death occurs within three years of the first death, by thirty per cent. ;

Where the second death occurs within four years of the first death, by twenty per cent. ;

Where the second death occurs within five years of the first death, by ten per cent. ;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

And see Death Duties (Killed in War) Act, 1914, *s.* 1 (3).

16. Where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART V.

Miscellaneous.

18. (1) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(2) Part III of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1914.

FIRST SCHEDULE.[1]

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate				Estate Duty shall be Payable at the Rate per cent. of
	£		£	
Exceeds	100	and does not exceed	500	1
„	500	„ „	1,000	2
„	1,000	„ „	5,000	3
„	5,000	„ „	10,000	4
„	10,000	„ „	20,000	5
„	20,000	„ „	40,000	6
„	40,000	„ „	60,000	7
„	60,000	„ „	80,000	8
„	80,000	„ „	100,000	9
„	100,000	„ „	150,000	10
„	150,000	„ „	200,000	11
„	200,000	„ „	250,000	12
„	250,000	„ „	300,000	13
„	300,000	„ „	350,000	14
„	350,000	„ „	400,000	15
„	400,000	„ „	500,000	16
„	500,000	„ „	600,000	17
„	600,000	„ „	800,000	18
„	800,000	„ „	1,000,000	19
„	1,000,000	- - -	- - -	20

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Statutes Repealed.
57 & 58 Vict., c. 30 -	The Finance Act, 1894	Sub-sections (1) and (4) of section five ; in section seventeen the words " the rate of the settlement estate duty where the property is settled shall be two per cent." ; sub-section (4) of section twenty-one.
10 Edw. 7, c. 8 -	The Finance (1909-10) Act, 1910.	Section 54 and the Second Schedule as respects persons dying after the fifteenth day of August, one thousand nine hundred and fourteen. . . .

[1] New scale substituted as to persons dying after 30th July, 1919, by F. A. 1919, s. 29.

DEATH DUTIES (KILLED IN WAR) ACT, 1914.

[4 & 5 GEORGE 5, CHAPTER 76.]

[31st August, 1914.

1. (1) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war[1] as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts :—

(*a*) Where the value for the purpose of estate duty of the property passing to the widow, lineal descendants, or lineal ancestors does not exceed five thousand pounds, the whole of the death duties leviable in respect of that property ; and

(*b*) Where the said value exceeds five thousand pounds—

(i) in respect of the first five thousand pounds, the whole of the death duties ; and

(ii) so much of the duties leviable in respect of the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the date of death with half-yearly rests would, at the expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuitants, 1912), amount to the whole of the duties so leviable.

(2) The benefits of the relief given by this section as respects the first five thousand pounds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

(3) Where the relief in respect of estate duty afforded to the widow, lineal descendants, or lineal ancestors by section fifteen of the Finance Act, 1914, would be greater than that afforded to them in respect of estate duty by this section, the relief in respect of estate duty shall be that under the said section fifteen and not that under this section, but in other cases the relief afforded by the said section fifteen shall not apply to any estate duty to which this section applies.

2. (1) Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property passing on the death of any person to which section one of this Act applies, and that subsequently estate duty has again become payable on the same property or any part thereof passing on the death of some other person to which section one of this Act applies, the whole of the estate duty payable on such subsequent death in respect of the property so passing shall be remitted, or, in case the duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of estate duty.

(2) This section shall apply whether or not on any such death any property passes to the widow or lineal descendants or lineal ancestors of the deceased.

3. This Act may be cited as the Death Duties (Killed in War) Act, 1914.

And see extensions by F. A. 1915, *s.* 46, *F. A.* 1917, *s.* 29, *F. A.* 1918, *s.* 44, *F. A.* 1919, *s.* 31, *F. A.* 1921, *s.* 43 *and F. A.* 1924, *s.* 38.

THE AMERICAN LOAN ACT, 1915.

[5 & 6 GEORGE 5, CHAPTER 81.]

[13th October, 1915.

1. *Sub-sections* (1) *and* (2) *authorise the Treasury to raise a loan in the United States of America.*

[1] *The War legally came to an end on the* 31*st August*, 1921, *by Order in Council made in pursuance of the Termination of the Present War (Definition) Act*, 1918, *except as to Turkey, for which the date was ordered to be* 6*th August*, 1924.

(3) Any securities issued for the purposes of any such loan in the United States of America, except where they are held by persons domiciled in the United Kingdom, or by British subjects ordinarily resident in the United Kingdom, shall not be liable to any taxation, present or future.

2. This Act may be cited as the American Loan Act, 1915.

THE FINANCE (No. 2) ACT, 1915.

[5 & 6 GEORGE 5, CHAPTER 89.]

[23rd December, 1915.

PART IV.

46. Section 2 of the Death Duties (Killed in War) Act, 1914 (which provides for the remission of estate duty in respect of property passing more than once owing to deaths caused by the war), shall apply, and shall be deemed always to have applied, to succession and legacy duty as well as to estate duty.

47. The Treasury may, if they think fit, during the continuance of the present war[1] and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

48. Where the holder of any Government stock dies, the production of probate, confirmation, or letters of administration granted by any court in the United Kingdom having authority to grant the same shall be sufficient authority to the Banks of England and Ireland, to the National Debt Commissioners, to the Postmaster-General and to any savings bank authority to transfer the stock to the person to whom the probate, confirmation or letters of administration were granted, or as directed by that person.

The expression " Government stock " has the same meaning as in the Savings Bank Act, 1893, as amended by any subsequent enactment.

And see F. A. 1916, *s.* 67.

51. (3) This Act may be cited as the Finance (No. 2) Act, 1915.

FINANCE ACT, 1916.

[6 & 7 GEORGE 5, CHAPTER 24.]

[19th July, 1916.

61. *Empowered the Commissioners of Inland Revenue to accept Exchequer Bonds in payment of death duties but was repealed by s.* 34 *of Finance Act*, 1917.

63. Any securities issued in the United States of America by a municipal corporation, county council, or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, if issued under the authority of the Treasury, shall not be liable to any taxation present or future, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom. The expression " local authority " in this section includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purpose of this section by the Local Government Board.

67. Where any Government stock is transferred by virtue of s. 48 of the Finance (No. 2) Act, 1915, on the authority of any probate, confirmation, or letters

[1] *See* footnote to Death Duties (Killed in War) Act, 1914, s. 1.

of administration, or by virtue of this Act on the authority of any order or decree of any court, the Bank of England or Ireland, the National Debt Commissioners, the Postmaster-General, or the savings bank authority, as the case may be, shall be indemnified and protected, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate, confirmation, or letters of administration, or of such order or decree.

69. (3) This Act may be cited as the Finance Act, 1916.

FINANCE ACT, 1917.

[7 & 8 GEORGE 5, CHAPTER 31.]

[2nd August, 1917.

PART IV.

29. Section 14 of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914, and section 46 of the Finance (No. 2) Act, 1915, shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of this Act, from causes arising out of the operations of the present war[1] and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section 14, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

34. (1) The Treasury may by regulations[2] prescribe as securities to be accepted in payment of any death duty, or excess profits duty, or munitions exchequer payments, any stock or bonds forming part of any issue made for raising money in connection with the present war, and any such regulations may specify different securities in respect of different duties and payments, and may prescribe the limitations and conditions subject to which any securities will be accepted, and any person from whom any sum is due on account of any death duty or excess profits duty or munitions exchequer payments may pay that sum or any part thereof by means of the transfer, in accordance with and subject to the provisions of such regulations as aforesaid, to the Commissioners of Inland Revenue of an appropriate amount (ascertained as hereinafter mentioned) of any stock or bonds authorised by the regulations.

(2) Any stock or bonds so transferred shall be accepted by the Commissioners of Inland Revenue in satisfaction of the amount.

(3)[3] Any stock or bonds so transferred shall be deemed to mature for payment on the date of the transfer, but the principal payable on maturity shall be deemed to be a sum equal to the price of issue, and the principal and interest of the stock or bonds when received by the Commissioners of Inland Revenue shall be brought to account as revenue in such manner as the Treasury may direct.

(4)[3] Stock or bonds so transferred shall for the purposes of this section be valued at the price of issue with the addition of any interest accrued due at the date of transfer but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date.

(5) For the purposes of this section interest shall be deemed to accrue from day to day.

(6) Section 61 of the Finance Act, 1916, is hereby repealed.

37. *Contains provisions facilitating dealings with Government stock.*

38. Part IV of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1917.

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[1] *See* footnote, to Death Duties (Killed in War) Act, 1914, s. 1. [2] *See* page 220.
[3] *See* F. A. 1918, s. 42, for words added to sub-secs. (3) and (4) of s. 34.

THE FINANCE ACT, 1918.

[8 & 9 GEORGE 5, CHAPTER 15.]

[30th July, 1918.

38. *Provision for facilitating dealing with small amounts of Government stock belonging to deceased persons, including sums of stock not exceeding £500, belonging to any person resident in a British possession who has died on actual military service.*

42. Section 34 of the Finance Act, 1917, shall have effect as though there were inserted therein after the words "price of issue," in sub-section (3) and sub-section (4) thereof, the words "or such other price as was specified in the conditions subject "to which the stock or bonds were issued as the price at which the stock or bonds "were to be valued for the purposes of this section."

44. The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war, the relief from death duties given by section 14 of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

45. (3) This Act may be cited as the Finance Act, 1918.

THE FINANCE ACT, 1919.

[9 & 10 GEORGE 5, CHAPTER 32.]

[31st July, 1919.

PART III.

Death Duties.

29.[1] The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty :

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the 30th day of April 1919 been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

30. Section 18 of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.

31. Section 14 of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment amending or extending that section, shall, in their application to the present war,[2] have effect and be deemed always to have had effect as though—

(*a*) three years were substituted for twelve months wherever that expression occurs ; and

(*b*) in the said section fourteen the expression "wounds inflicted, accident "occurring or disease contracted while on active service against "an enemy" included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

38. (1) Part III of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1919.

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1 New scale substituted as to persons dying on or after 30th June, 1925, by F. A. 1925, s. 22.

2 *See* footnote to Death Duties (Killed in War) Act, 1914, s. 1.

THIRD SCHEDULE.[1]

SCALE OF RATES OF ESTATE DUTY.

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
	£		£	
Exceeds	100	and does not exceed	500	1
,,	500	,, ,,	1,000	2
,,	1,000	,, ,,	5,000	3
,,	5,000	,, ,,	10,000	4
,,	10,000	,, ,,	15,000	5
,,	15,000	,, ,,	20,000	6
,,	20,000	,, ,,	25,000	7
,,	25,000	,, ,,	30,000	8
,,	30,000	,, ,,	40,000	9
,,	40,000	,, ,,	50,000	10
,,	50,000	,, ,,	60,000	11
,,	60,000	,, ,,	70,000	12
,,	70,000	,, ,,	90,000	13
,,	90,000	,, ,,	110,000	14
,,	110,000	,, ,,	130,000	15
,,	130,000	,, ,,	150,000	16
,,	150,000	,, ,,	175,000	17
,,	175,000	,, ,,	200,000	18
,,	200,000	,, ,,	225,000	19
,,	225,000	,, ,,	250,000	20
,,	250,000	,, ,,	300,000	21
,,	300,000	,, ,,	350,000	22
,,	350,000	,, ,,	400,000	23
,,	400,000	,, ,,	450,000	24
,,	450,000	,, ,,	500,000	25
,,	500,000	,, ,,	600,000	26
,,	600,000	,, ,,	800,000	27
,,	800,000	,, ,,	1,000,000	28
,,	1,000,000	,, ,,	1,250,000	30
,,	1,250,000	,, ,,	1,500,000	32
,,	1,500,000	,, ,,	2,000,000	35
,,	2,000,000	- - -	- - -	40

THE WAR LOAN ACT, 1919.

[9 & 10 GEORGE 5, CHAPTER 37.]

[15th August, 1919.

Amends s. 34 (3), F. A. 1917, and 38 (2) F. A. 1918.

[1] New scale substituted as to persons dying on or after 30th June, 1925, by F. A. 1925, s. 22.

FINANCE ACT, 1921.

[11 & 12 GEORGE 5, CHAPTER 32.]

[4th August, 1921.

PART IV.

Death Duties.

43. (1) The provisions of section fourteen of the Finance Act, 1900, under which, as amended by subsequent enactments, relief is given in respect of the death duties payable on property passing on the death of certain persons killed in the present war,[1] shall, subject to the provisions of this section, have effect in the case of persons, being persons to whom this section applies, who die from causes arising directly out of the present state of disorder in Ireland as they have effect in the case of the persons killed as aforesaid.

(2) The persons to whom this section applies are the members of any of His Majesty's Forces, judges, magistrates, members of any police force in Ireland (including special constables), and members of His Majesty's Civil Service, serving in Ireland.

(3) The Treasury shall, for the purposes of this section, act in the case of persons who are not members of His Majesty's Forces on the recommendation of the Lord Lieutenant of Ireland.

(4) This section shall apply in the case of any person dying from any such cause as aforesaid arising at any time after the 31st December, 1918, and before such date as His Majesty may by Order in Council fix.

44. Notwithstanding anything in section twenty of the Finance Act, 1896 (which as amended by section sixty-three of the Finance (1909-10) Act, 1910, gives exemption from estate duty, legacy duty, and succession duty to objects of national, scientific, historic and artistic interest so long as they remain unsold), or in the said section 63, duty shall not become chargeable on the sale, after the passing of this Act, of any property in respect of which exemption has been allowed under those sections, if the sale is to the National Gallery, British Museum, or other similar national institution, any university, any county council, any municipal corporation, in the United Kingdom, or the National Art Collections Fund.

63. *Contains provisions for cases where documents relating to death duties have been lost, destroyed or damaged.*

65. (1) Part IV. of this Act shall be contrued together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1921.

FINANCE ACT, 1922.

[12 & 13 GEORGE 5, CHAPTER 17.]

[20th July, 1922.

PART II.

30. (1) Where a charity is entitled to the residuary estate of any testator and the residue or some part thereof is not paid to the charity until after the expiration of one year after the death of the testator, there shall be treated as being income of the charity for the purposes of the Income Tax Acts such portion of the income, if any, which accrued to the estate in respect of the period between the expiration of the said year and the date of payment as would have accrued to the charity if the residue, or the said part of the residue, had been paid to the charity immediately after the expiration of the said year and the assets constituting

[1] *See* footnote to Death Duties (Killed in War) Act, 1914, s

the estate (excluding any part thereof specifically bequeathed or devised) on that date had then been apportioned rateably as between the creditors, legatees (other than specific legatees), and persons entitled to the residue.

(2) *Empowers the Special Commissioners to determine any questions under this section on appeal.*

(3) In this section the expression "charity" means any body of persons or trust established for charitable purposes only, and references to the residuary estate of a testator include references to a share of residuary estate.

PART V.

44. Where any land or chattels settled by Act of Parliament or Royal grant pass on the death of any person, any estate duty payable in respect thereof, or of any interest therein, under sub-section (5) of section five of the Finance Act, 1894, may, at the option of the person authorised or required to pay the same, and notwithstanding anything in the said section or in the Act of Parliament or Royal Grant settling the said land or chattels, be treated as a charge on and be raised and paid out of the *corpus* of such land or chattels, and the provisions of section nine of the Finance Act, 1894, dealing with the charge of estate duty and the facilities for raising that duty shall apply.

The option given by this section shall be exercisable in any case in which estate duty in respect of land or chattels, or any interest therein, to which sub-section (5) of section five of the Finance Act, 1894, applies, is unpaid at the date of the passing of this Act, irrespective of the date of the death which gave rise to the claim for that duty.

45. (1) Section twenty of the Finance Act, 1894 (which relates to payment of death duties where death duties are payable in certain British Possessions), shall have effect as if the Malay States were a British Possession within the meaning of that section.

(2) For the purposes of this section, "the Malay States" means the Federated Malay States and Johore, Kedah, Perlis, Kelantan, Trengganu, and Brunei.

49. (2) This Act may be cited as the Finance Act, 1922.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

FINANCE ACT, 1923.

[13 & 14 George 5, Chapter 14.]

[18th July, 1923.

PART IV.

37. (1) Where property situate out of Great Britain is bequeathed to or settled on different persons in succession and legacy duty or succession duty has, whether before or after the commencement of this Act, been paid thereon, such duty shall for the purposes of sub-section (2) of section two of the Finance Act, 1894 (which provides that property situate out of Great Britain shall be deemed to be included in property passing on the death of the deceased only if legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes), be deemed to be payable in respect of the property on the death of each of those persons in succession, notwithstanding that the whole amount of the duty was paid on one death only as in the case of a legacy to one person.

(2) This section shall apply in the case of property passing on the death of a person who dies on or after the sixteenth day of April, nineteen hundred and twenty-three.

39. (2) This Act may be cited as the Finance Act, 1923.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

FINANCE ACT, 1924.

[14 & 15 GEORGE 5, CHAPTER 21.]

[1st August, 1924.

PART III.

38. (1) All such relief as might have been given under Section fourteen of the Finance Act, 1900, as amended by subsequent enactments (but not including section 2 of the Death Duties (Killed in War) Act, 1914), in respect of the death duties payable on property passing on the death of certain persons killed in the late war shall be given in respect of the death duties payable on the death of persons, being persons to whom this section applies, who die from wounds inflicted, accidents occurring, or disease contracted while on active service against an enemy, or on service which is of a warlike nature, or which, in the opinion of the Treasury, otherwise involves the same risks as active service.

(2) The persons to whom this section applies are the members of His Majesty's Forces who are subject either to the Naval Discipline Act or to military law, whether as officers, non-commissioned officers, or soldiers, under Part V. of the Army Act, or to the Air Force Act.

(3) This section shall apply in the case of any persons dying from any such causes aforesaid arising after the thirty-first day of August, nineteen hundred and twenty-one.

41. (2) This Act may be cited as the Finance Act, 1924.

(3) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE LAW OF PROPERTY ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 20.]

[9th April, 1925.

PART I.

* * * * * * * * *

Death Duties.

16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being over-reached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

17.—(1) Where a charge in respect of death duties is not registered as a land charge,[1] a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is over-reached by the conveyance, together with any interest payable in respect of the same.

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is over-reached by such conveyance, immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the conveyance:

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

(5) This section does not apply to registered land.[2]

18.—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds

[1] As to the registration as a land charge of a charge acquired by the Commissioners of Inland Revenue for any death duty, *see* L. C. A. 1925, s. 10.

[2] As to registered land, *see* L. R. A. 1925, s. 73.

of sale of land, being land held on trust for sale in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being over-reached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

(*a*) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed ;

(*b*) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid ;

(*c*) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

PART XII.

Construction, Jurisdiction, and General Provisions.

205.—(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

* * * * * * * * *

(ii) " Conveyance " includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will ; " convey " has a corresponding meaning ; and " disposition " includes a conveyance and also a devise, bequest, or an appointment of property contained in a will ; and " dispose of " has a corresponding meaning ;

* * * * * * * * *

(iv) " Death duty " means estate duty, succession duty, legacy duty, and every other duty leviable or payable on a death ;

(v) " Estate owner " means the owner of a legal estate, but an infant is not capable of being an estate owner ;

* * * * * * * * *

(ix) " Land " includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments ; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land ; but not an undivided share in land ; and " mines and minerals " include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof ; and " manor " includes a lordship, and reputed manor or lordship ; and " hereditament " means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir ;

(x) " Legal estates " mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised

to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act;

* * * * * * * * *

(xvii) "Notice" includes constructive notice;

(xviii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

* * * * * * * * *

(xxi) "Purchaser" . . . in Part I. of this Act . . . only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; . . .

(xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;

* * * * * * * * *

(xxiv) "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called;

(xxv) "Securities" include stocks, funds and shares;

(xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement" have the same meanings as in the Settled Land Act, 1925;

* * * * * * * * *

209.—(1) This Act may be cited as the Law of Property Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

THE LAND REGISTRATION ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 21.]

[9th April, 1925.

PART I.

PRELIMINARY.

3. In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

* * * * * * * *

(iii) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on any death;

* * * * * * * *

(viii) "Land" includes land of any tenure (including land, subject or not to manorial incidents, enfranchised under Part V. of the Law of Property Act, 1922), and mines and minerals, whether or not held with the surface, buildings or parts of buildings (whether the

division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "hereditaments" mean real property which on an intestacy might, before the commencement of this Act, have devolved on an heir;

* * * * * * * * *

(xv) "Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register and are not overriding interests, and include—

(*a*) in the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests and powers are so protected; and

(*b*) in the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them capable of being overridden by the tenant for life or statutory owner whether or not such interests and powers are so protected as aforesaid;

* * * * * * * * *

(xvii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; and where there are special personal representatives for the purposes of any settled land, it means, in relation to that land, those representatives;

* * * * * * * * *

(xx) "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge;

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land;

(xxii) "Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration;

(xxiii) "Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act;

(xxiv) "Registered land" means land or any estate or interest in land the title to which is registered under this Act or any enactment replaced by this Act, and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith;

* * * * * * * * *

(xxviii) " Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale ;

* * * * * * * * *

PART VI.

General Provisions as to Registration and the Effect thereof.

73.—(1) A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of His Majesty for death duties, notwithstanding that notice of a claim for duties may be noted on the register under this section (1).

(2) A disposition to any person, other than a purchaser, shall take effect subject to any charge for payment of death duties and the interest thereon, whether notice of a claim for the duties is entered on the register or not.

(3) A personal representative, in whom the registered estate vests on a death, shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of the registered land or any interest therein.

(4) In every other case the proprietor of a registered estate (other than a purchaser who acquires a registered estate free from the charge for duties) shall be accountable for all the death duties which become leviable or payable in respect of that estate or of any minor interest capable of being overridden by a registered disposition made by him.

(5) A personal representative or other proprietor who disposes of any interest in registered land to a purchaser by a disposition which is registered or protected on the register, and the proceeds of sale, funds and other property, if any, derived from the disposition and the income thereof, shall (subject as hereinafter provided) be and remain liable in respect of and stand charged with the payment of the duties the charge for which is overridden by the disposition, together with any interest payable in respect of the same.

(6) Notwithstanding that any duties may be payable by instalments, on a disposition of a registered estate by way of sale, exchange, or charge, all death duties payable in respect of the estate dealt with remaining unpaid, the charge for which is overridden by such disposition, shall immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the disposition :

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(7) Where on the death of a proprietor it appears to the registrar that a charge for death duties has arisen, the registrar shall enter notice of the charge on the register in the prescribed manner.

(8) When any such notice is entered, the registrar shall, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice of the intended registration or entry to the said Commissioners, and cancel the notice of the claim for duties so far as it relates to the land or interest therein comprised in the disposition.

(9) When all claims for duties have been satisfied, or no such claims arise, or the said Commissioners are satisfied that the duties will be paid or commuted, they shall notify the fact to the registrar, who shall thereupon cancel the notice, if any, of the claim.

---

[1] As to an unregistered disposition, *see* the L. P. A. 1925, s. 17.

(10) For the purpose of raising the duty and the costs of raising the same, the personal representative or other proprietor accountable as aforesaid shall have all the powers which are by any statute conferred on any person for raising the duty.

(11) Notwithstanding that any duties are by this section made payable by the personal representative or proprietor of the land, nothing herein contained shall affect the liability of the persons beneficially interested or of their minor interests in respect of any duty, and such persons shall accordingly account for or repay the same, and any interest and costs attributable thereto, to the said Commissioners or to the personal representative or other proprietor made accountable, and nothing in this section shall affect the remedies of the said Commissioners against any person other than a purchaser.

(12) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which the duty became payable, and personal estate held on the same trusts as the proceeds of sale of land (in respect of which the duty became payable) held on trust for sale, may, by the direction of the person accountable, and although the duty is only payable in respect of a minor interest which is or is capable of being overridden by a disposition to a purchaser, be applied in discharging all or any of the duties and costs aforesaid.

(13) Where the duties would not, except by virtue of the last subsection, be payable out of capital money, the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or trustees for sale, by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid if the land had not been disposed of, and the minor or other interests of the persons liable and remaining subject to the settlement of the land or of the proceeds of the sale, shall stand charged with the repayment of the instalments and interest aforesaid; and the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

(14) Nothing in this section shall impose on a personal representative, trustee or other person in a fiduciary position, as such, any liability for payment of duty in excess of the assets (including real estate) vested in him or in the trustees of the settlement which may for the time being be available in his or their hands for the payment of the duty, or which would have been so available but for his or their own neglect or default, or impose on the proprietor of a registered charge any liability to discharge death duties unless the claim was paramount to his charge.

(15) In this section " purchaser " includes only a purchaser for money or money's worth.

(16) This section only applies to death duties which become payable or leviable after the commencement of this Act.

With respect to death duties which become payable or leviable before that date section thirteen of the Land Transfer Act, 1897, and all the other provisions of the Land Transfer Acts, 1875 and 1897, relating to death duties shall, notwithstanding any repeal, continue to apply.

PART VIII.

Application to particular Classes of Land.

87.—(1) On the death of a proprietor, or of the survivor of two or more joint proprietors of settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death), his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the settlement, upon trust to transfer the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interests under the settlement; but a transfer shall not be made to an infant.

* * * * * * * * *

PART XII.

ADMINISTRATIVE AND JUDICIAL PROVISIONS.

His Majesty's Land Registry.

129. The Commissioners of Inland Revenue and other Government Departments, and local authorities, may furnish to the registrar on his request such particulars and information in regard to land and charges, and the registrar may in like manner furnish to the Commissioners of Inland Revenue, other Government Departments, and local authorities on their request such particulars and information as they are respectively by law entitled to require owners of property to furnish to them direct.

* * * * * * * * *

148.—(1) This Act may be cited as the Land Registration Act, 1925.

(2) This Act shall come into operation on the first day of January nineteen hundred and twenty-six, but shall be deemed to come into operation immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925, come into operation.

(3) This Act extends to England and Wales only.

* * * * * * * * *

THE LAND CHARGES ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 22.]

[9th April, 1925.

PART V.

Land Charges.

10.—(1) The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely :—

* * * * * * * * *

Class C :—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act ; but if created before such commencement only if acquired under a conveyance made after such commencement, namely :—

* * * * * * * * *

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called " a limited owner's charge ") ; and

* * * * * * * * *

Class D :—A charge or obligation affecting land of any of the following kinds, namely :—

(i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act ; and

* * * * * * * * *

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act,

in the name of a person not being the estate owner, it may remain so registered until it is registered in the name of the estate owner in the prescribed manner.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

* * * * * * * * *

13.—(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase :

Provided that, as regards a land charge of class D and an estate contract created or entered into after the commencement of this Act, this sub-section only applies in favour of a purchase of a legal estate for money or money's worth.

* * * * * * * * *

PART VIII.

General.

20. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

* * * * * * * * *

(4) "Estate owner," "legal estate," "equitable interest," "trust for sale," "charge by way of legal mortgage," "will," and "death duty" have the same meanings as in the Law of Property Act, 1925.

* * * * * * * * *

(8) "Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land ; and "purchase" has a corresponding meaning ;

* * * * * * * * *

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

26.—(1) This Act may be cited as the Land Charges Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

THE FINANCE ACT, 1925.

[15 & 16 GEORGE 5, CHAPTER 36.]

[30th June, 1925.

PART III.

Death Duties.

22. The scale set out in the Fourth Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Third Schedule to the Finance Act, 1919, as the scale of rates of estate duty :—

Provided that, where an interest in expectancy within the meaning of Part I. of the Finance Act, 1894, in any property has, before the twenty-eighth day of April, nineteen hundred and twenty-five, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

23.—(1) Where an estate in respect of which estate duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the estate duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the appropriate rate payable under this Act, be charged as follows, that is to say, the duty shall be charged on the agricultural value of the property at the appropriate rate payable under the scale of rates set out in the Third Schedule to the Finance Act, 1919, and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as " the excess principal value ") at the appropriate rate payable under the scale set out in the Fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt or incumbrance in respect of which an allowance is by law to be made for the purposes of estate duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression " agricultural property " means agricultural property within the meaning of paragraph (*g*) of subsection (1) of section twenty-two of the Finance Act, 1894, and the expression " appropriate rate " means the rate of estate duty appropriate to the principal value of the estate passing on the death of the deceased.

24. For the purposes of section eighteen of the Finance Act, 1894, and of section fifty-eight of the Finance (1909-10) Act, 1910, a succession shall be deemed to arise on the happening of the death by reason of which the successor, or any person in his right or on his behalf, becomes entitled in possession to the succession or to the receipt of the income or profits thereof.

PART IV.

General.

* * * * * * * * *

28.—(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(4) This Act may be cited as the Finance Act, 1925.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * * * * *

SCHEDULES.

FOURTH SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Principal Value of the Estate.					Rate per cent. of Duty.
	£		£		
Exceeding	100	and not exceeding	500		1
,,	500	,,	1,000		2
,,	1,000	,,	5,000		3
,,	5,000	,,	10,000		4
,,	10,000	,,	12,500		5
,,	12,500	,,	15,000		6
,,	15,000	,,	18,000		7
,,	18,000	,,	21,000		8
,,	21,000	,,	25,000		9
,,	25,000	,,	30,000		10
,,	30,000	,,	35,000		11
,,	35,000	,,	40,000		12
,,	40,000	,,	45,000		13
,,	45,000	,,	50,000		14
,,	50,000	,,	55,000		15
,,	55,000	,,	65,000		16
,,	65,000	,,	75,000		17
,,	75,000	,,	85,000		18
,,	85,000	,,	100,000		19
,,	100,000	,,	120,000		20
,,	120,000	,,	140,000		21
,,	140,000	,,	170,000		22
,,	170,000	,,	200,000		23
,,	200,000	,,	250,000		24
,,	250,000	,,	325,000		25
,,	325,000	,,	400,000		26
,,	400,000	,,	500,000		27
,,	500,000	,,	750,000		28
,,	750,000	,,	1,000,000		29
,,	1,000,000	,,	1,250,000		30
,,	1,250,000	,,	1,500,000		32
,,	1,500,000	,,	2,000,000		35
,,	2,000,000	,,	.. ..		40

INDEX.

ABBREVIATIONS USED.

E.D.=Estate Duty.
F.A.=Finance Act.
G.B.=Great Britain.
L.D.=Legacy Duty.
S.D.=Succession Duty.
S.E.D.=Settlement Estate Duty.

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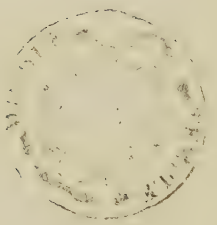

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